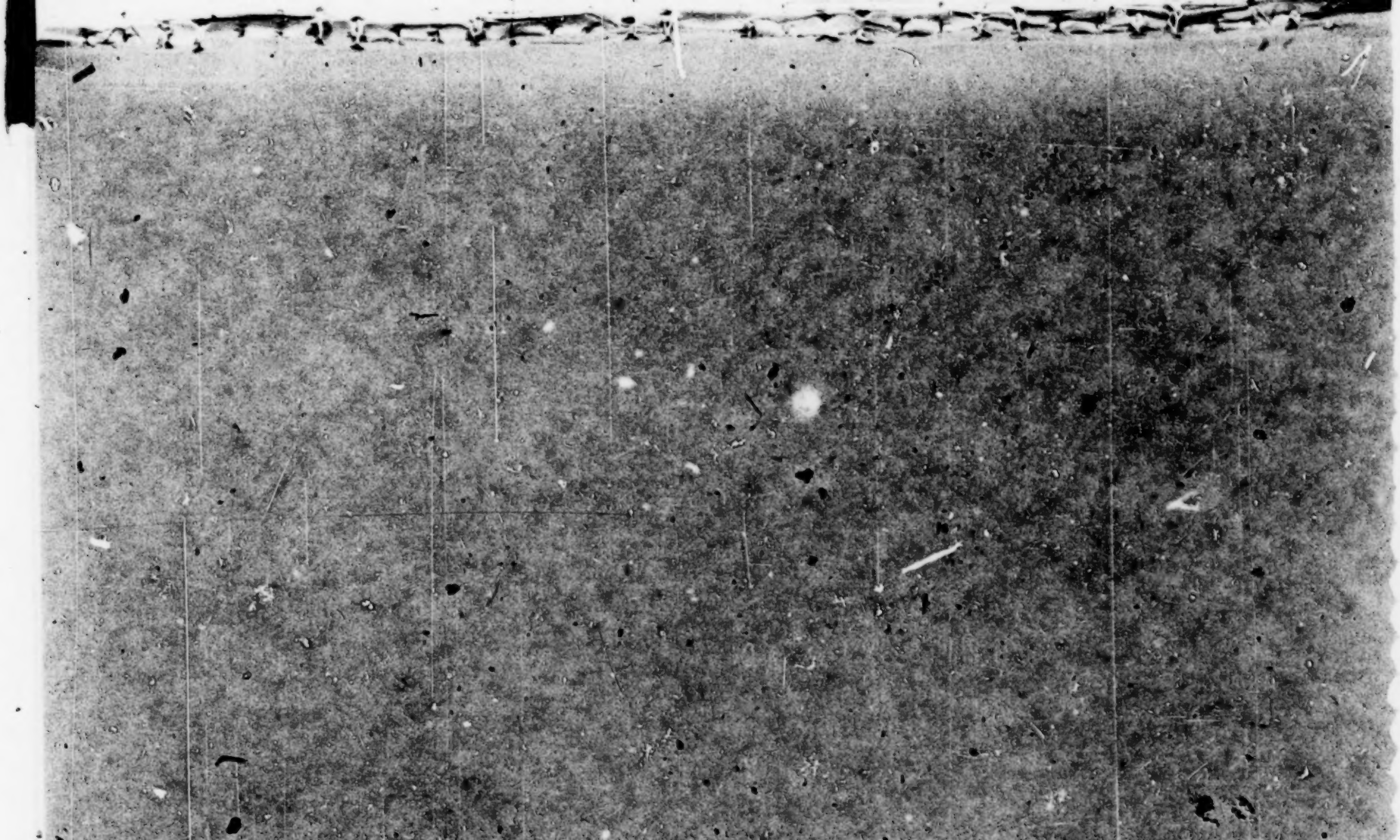

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APPENDIX A

Opinion of Supreme Court of Tennessee

FORD MOTOR COMPANY

v.

CHESTER R. PACE, etc., et al.

Supreme Court of Tennessee.

March 11, 1960.

Rehearing Denied May 4, 1960.

BURNETT, Justice.

The original bill in this cause was filed by the Ford Motor Company seeking declaratory judgment as to the validity of Chapter 79 of the Public Acts of 1955 (now codified as Sections 59-1701 through 59-1720, as this Chapter was amended by subsequent Acts), and, if valid, construction of the Act. We take jurisdiction only on the proposition that the constitutionality of the statute "is the sole determinative question in the litigation". (§ 16-408, T. C.A.). If this were not true, the jurisdiction of the case would be in the Court of Appeals.

The chancellor in a memorandum opinion, which is made a part of the record, held that the Act as a whole and each particular part thereof was unconstitutional. From this holding an appeal was seasonably perfected and six of the most able briefs, it has been the writer's pleasure to read, have been filed setting forth the questions to be determined on one side or the other. We have read and re-read the statute as it is codified, supra, the various briefs and all authorities cited therein as well as making some independent

investigation on our own part. After spending many days at this work we have now reached our conclusions and will hereinafter attempt to put them on paper.

The basic argument is that the Act is an invalid exercise of the police power of the State, in that this Motor Vehicle Act serves no public purpose, that such regulations as it provides do not promote the health, safety, moral or general welfare of the public, and consequently it is inimical to the due process clauses of Article 1, Section 8 of the Tennessee Constitution, and the 14th Amendment to the Constitution of the United States. The basic case around which this argument hinges, and upon which one of the briefs is pitched entirely, is our recent opinion of Livesay v. Tennessee Board of Examiners in Watchmaking, Tenn., 322 S.W.2d 209.

In considering the question, whether or not the Legislature has the right to enact such a statute under the police power, we must take into consideration and look at things in the light of the social and economic conditions existing at the present time rather than at the time our Constitution was adopted. Legislative power is not static and helpless but arises to adjust and face new conditions as they appear to affect the people of the State. Of course, the Legislature of the State cannot prohibit an ordinary business but it may, however, regulate the business to promote the health, safety, morals or general welfare of the public. The guarantees of the Constitution imply the absence of arbitrary restraint, but not immunity from reasonable regulations and prohibitions imposed in the interest of the people of the State.

Aside from the record herein we must take judicial knowledge of the tremendous growth of the automobile vehicular industry in the State. All other industries employing any number of people have had to create huge

parking lots for the people to park their cars who come to work. The highways are crowded. The State and Nation are building more, and broader and larger, highways to care for this motor vehicular traffic. The papers and radio are constantly warning people and trying to educate them as to careful driving because of the many, many accidents and deaths that occur by reason of negligence or faulty cars or whatnot. Thus it is, knowing these facts, when we consider the matter in this light, we think that the statement of the Supreme Court of Nebraska in Nelsen v. Tilley, 1939, 137 Neb. 327, 289 N.W. 388, 392, 126 A.L.R. 729, 734, is very appropriate under the discussion now being had. That court said:

> "Motor vehicles, once luxuries, are now necessities. The handling of motor vehicles has become a complex business. The sale of new automobiles is closely tied in with the purchase, trade and sale of used cars. The possibilities of fraud upon the public have correspondingly increased. The elimination of harmful trade practices and dishonest dealings resulting in injury to the purchasing public may have been, and undoubtedly was, a factor in the passage of the act. Many courts have sustained similar legislative enactments."

A fortiori this statement is true today.

From our investigation we have been unable to find any case which holds that it is not within the police power of the State to enact such legislation as that referred to in the quotation last above. See 46 Am.Jur., page 200, Section 5, Sales.

The Court of Appeals of Ohio in Ohio Motor Vehicle Dealers, etc. v. Memphis Auto Sales, 103 Ohio App. 347, 142 N.E. 2d 268, 275, had this to say: "True the sale

of motor vehicles is affected by public interest and laws regulating their sale generally are salutary." And further: "Certainly the legislature has the power to determine that the conduct of an agency engaged in the sale of new motor vehicles is a business affected by the public interest. This fact has been recognized by legislatures and courts throughout the country." Another case holding to this same view is Rebsamen Motor Co. v. Phillips, 1956, 226 Ark. 146, 289 S.W.2d 170, 57 A.L.R.2d 1256. We in this State long ago established the legal principle which is followed in most cases that when the Legislature has enacted a statute, which is apparently for the protection of the public safety, or the public health or the public morals of the people, that the Court will not encroach upon this Act or the right of the Legislature. This Court said in Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 12, 13:

> "* * * Furthermore we are not concerned in determining the constitutionality of an Act 'whether it was dictated by a wise or a foolish policy, or whether it will ultimately redound to the public good, or whether it is contrary to natural justice and equity. These are considerations solely for the Legislature.' Motlow v. State, 125 Tenn. 547, 589, 145 S.W. 177, 188, L.R.A.1916 F, 177."

We, too, have said that "Public Policy is the present concept of public welfare or general good. The police power is the attribute of sovereignty by which the public policy is preserved and promoted." State ex rel. Loser v. National Optical Stores Co., 189 Tenn. 433, 225 S.W.2d 263, 269. Thus it is, from what has been said above, we can readily see how the Legislature had it in mind that legislation as that herein, which will hereinafter be more specifically referred to, was well within its police power. It is not at all unreasonable for us to believe that the Legislature had the

purpose in mind in enacting this legislation to protect the public safety, health, and/or public morals of its people. When we thus have determined that the legislation is reasonable, certainly under the Section of our Constitution hereinbefore referred to and the 14th Amendment to the United States Constitution, this legislation is not unconstitutional merely because it is attempting to regulate the motor vehicle or automobile industry, its dealers, salesmen, etc.

The Act in question does not involve watch repairers or makers, house painters, paper hangers, land surveyors, morticians, dancing schools, horse shoers, dry cleaners, layers of drain tile and things of that kind, which have been correctly held beyond the police power of the Legislature for the very apt and fine reasons as set forth in the Livesay case, supra. The question before us though involves the classification of the entire automobile industry, an industry constituting one of the largest segments of our economy This within itself gives some possible reason for the classification and the action of the Legislature in adopting and enacting this police statute. Phillips v. State, 202 Tenn. 402, 304 S.W.2d 614, which was prepared for this Court by Mr. Justice Tomlinson, who also wrote the very excellent opinion in the Livesay case.

It makes no difference what our personal views may be as to the necessity of such legislation as that herein, the fact remains that the Legislature of the State concluded that a reasonable basis existed for its enactment, and, there being some foundation in fact to justify this legislative action, the Court is powerless and it wouldn't be right on our part for us to substitute our judgment for that of the Legislature even if we cared to do so. Thus having concluded that the Legislature had the authority under the police power to regulate the purchase and sale of motor vehicles for the

protection and general welfare of the public, we now come to consider various Sections of the Act and attacks made thereon.

Our reference to the Act in question is to the Act as codified in Sections 59-1701 through 59-1720, Cumulative Supplement to T.C.A.

The first section is a declaration of legislative intent, it being necessary for the public welfare etc., the Legislature under its police power passed this Act to regulate and license motor vehicles, dealers, salesmen, etc. The next section defines the principal terms used in the Act and then follows the creation of the Tennessee Motor Vehicle Commission, which was composed of one member from each of the nine Congressional Districts, plus a Chairman selected from the State at large, all selected and appointed by the Governor from a list furnished by the Tennessee Automotive Association. The Act provides for the qualifications, terms, etc., for these members, their oaths and that the Commission would have an Executive Secretary; also invests the Commission with the power to carry out the purposes of the Act and adopt rules for the same.

The clear intent of the Act is that any person, firm, etc. engaging in the business of manufacturing, distributing, or selling motor vehicles had to be licensed by the Commission, and a latter Section in the Act provides that it is a misdemeanor if anyone attempts to do any one of these things regulated under the Act without first being licensed.

The fees provided are very reasonable: for the distributor one hundred ($100) dollars; for a motor vehicle dealer twenty-five ($25) dollars; for a used car dealer twenty-five ($25) dollars; for a factory representative fifteen ($15) dollars; and for a salesman only three ($3) dollars. Then, of course, there are provisions in the Act penalizing those who do not comply by increasing this.

Section 59-1713, T.C.A., has been in for considerable discussion in the briefs of the appellees. This Section requires that these different people who are licensed and regulated by the Act must specify the location of their business, and, if they change this location, they must notify the Commission, and, if they change to another county, they shall acquire a new license. This Section is obviously a proper regulation, because it is the only way the Commission can keep up with the different parties' licenses.

The controversial Section of the Act as a whole is the following, 59-1714, T.C.A. Under this Section of the Act the Commission is vested with authority to deny application or to revoke or suspend a license for various and sundry reasons as set forth in the Act. Briefly and in summary, these grounds are: unfitness of the applicant, fraud or material misstatement in the application for a license; failure to comply with the Act, and rules and regulations adopted thereunder; flagrant violation of the rules; requiring as a condition of purchase the purchase of special equipment; selling as a new vehicle one which is in fact used; selling as a new vehicle one for which a new car warranty cannot be secured without explaining the fact; having no established place of business; resorting to false or misleading advertising; coercing dealers to accept motor vehicles or parts or accessories not voluntarily ordered, or coercing dealers to order and accept delivery of vehicles with special features not included in the manufacturers list price, or coercing dealers to buy parts etc., only from the manufacturer; refusing to deliver vehicles within sixty (60) days after the dealers order has been received, where the same has been advertised for immediate delivery; inducing or coercing agreements between manufacturers and dealers by threat of cancellation of franchises; unfairly canceling franchises; forcing methods of delivery of new vehicles; and entering

into agreements with dealers who do not have proper servicing facilities.

The Act provides for a hearing by the Commission through its hearing officer with review of the findings of the hearing officer by the Commission, and for a judicial review of the findings of the Commission as provided for other legislative boards under the general law.

In addition to the grounds set forth in the outset of this opinion that the Legislature lacked any reason to enact the Act under its police powers and the Sections of the Constitution therein referred to, the appellees attack the Act on the ground that it violates Article 1, Section 22, and Article 11, Section 8 of our Constitution, in that it is class legislation and designed to create a monopoly. In Nelsen v. Tilley, supra, the Supreme Court of Nebraska struck down the Act there because they were of the opinion that it created a monopoly in persons enfranchised by the manufacturer of motor vehicles. It was said that the selling of new cars would be monopolized by dealers enfranchised by the manufacturers in that the Act was attempting to prohibit citizens from engaging in the business which was free to everybody when it attempted to limit is to one class of people. The Act here in question is not so worded, or does not have this meaning. The Act under consideration covers all dealers, distributors, salesmen, etc., selling new and used automobiles, and it does not attempt to confine its regulatory powers to any one group. This being true, it is not violative of the constitutional provisions or any other that we know of. Spoone v. Mayor & Aldermen of Town of Morristown, 185 Tenn. 454, 461, 206 S.W. 2d 422.

The same reasoning, above, applies to the attack on the Act in that it constitutes a burden on interstate commerce. The Act applies to all alike, whether they are out of the State or in the State, so long as they are doing business here, and

this being true, it is not a burden on interstate commerce. See State v. Helwig, 262 Wis. 299, 54 N.W.2d 907, 908, where cases from many jurisdictions, including that of the Supreme Court of the United States, support this statement.

It is argued very forcibly that the Act is so vague in its terms that it violates procedural due process. The Act creates the Motor Vehicle Commission and defines the policy and those actions which offend that policy. This act vests in this Commission the authority to carry out the administration of that policy. The words of the statute are to be taken in their natural and ordinary meaning. Moto-Pep, Inc. v. McGoldrick, 202 Tenn. 119, 303 S.W.2d 326. And, of course, to those words which are attacked, we must ascribe the meaning to be ascertained and determined from the context of the Act so as to give them the purpose which was the intention expressed in the Act.

A great many other states have enacted laws very similar to the Act here under question. Some of these laws have been on the statute books of other states for many years, and many of them are indeed very similar to that here under attack and some are identical. The States of Wisconsin, Colorado, Virginia, Florida, Oklahoma, South Dakota, Michigan, Ohio, Mississippi and Arkansas have related Acts. The Arkansas Act (Acts 1955, No. 182) was striken down in Rebsamen Motor Co. v. Phillips, supra, because the statute franchised dealers in new and unused motor vehicles and their salesmen while the unfranchised competitors dealing in new and unused cars were not regulated. Obviously, the Act was unconstitutional for that reason, but that has no application to the Act here in question because it deals with all alike.

The Wisconsin statute (W.S.A. 218.01) was upheld in the case of Kuhl Motor Co. v. Ford Motor Co., 270 Wis. 488, 71 N.W. 2d 420, 55 A.L.R.2d 467. The appellees at-

tempt to minimize the holding in this Wisconsin case herein, because what was the majority opinion in the first instance turned out on petition to rehear to be the minority opinion, and the dissenting opinion in the first instance was the majority opinion. The dissenting opinion upholds the provisions of the Act in general and legislation of this kind. This case likewise upheld the proposition that it was well within the legislative prerogative, under their police powers (their provisions of the Constitution being almost identical with ours), to enact such legislation. Even the dissent does not question this fact. It questions primarily certain provisions of the Act which it is said, in the dissent, would not give the Ford Motor Company rights under the due process laws.

Louisiana has an Act very similar to that here under discussion. (LSA-R.S. 32:1251 et seq.) This Act was upheld by the court of last resort of Louisiana in Louisiana Motor Vehicle Commission v. Wheeling Frenchman, et al., which is the latest case decided on the subject, May, 1958, and it is reported in 235 La. 332, 103 So.2d 464, 469. Among other things the court observed in that opinion "that the production, transportation and marketing of automobiles is unquestionably a proper subject for regulation by the Legislature under its police power."

The related acts have been upheld in at least two other cases, that of Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc., D.C.Minn., 142 F.Supp. 469, M.S.A. § 168.27, and Buggs v. Ford Motor Co., 7 Cir., 113 F.2d 618 (W.S.A. 218.01); while the Colorado Act (C.R.S. '53, 13-11-1 et seq.) has been held unconstitutional by a three judge Federal Court in the case of General Motors Corp. v. Blevins, D.C.Colo., 144 F. Supp. 381.

In the last case cited, the Blevins case, the Court therein made a number of relatively diverse holdings about different things. The case was decided by the United States Court

without the benefit of having the court of last resort of Colorado pass on the constitutionality of the State Act. Apparently the case, as far as General Motors was concerned, was not met with much opposition. The opinion in this case makes reference to other cases cited to the contrary merely by brushing them off by stating that other facts were involved in those cases. The opinion did not attempt to distingush them otherwise. As far as we are concerned, this opinion obviously does not have the persuasive power the case from Louisiana and other cases, we have referred to, do have in our consideration of the question here involved.

Much argument is contained in the various briefs, supporting the position of the appellee, that the language of the Act violates due process because of vagueness and uncertainty of its terms. In discussing this question the briefs argue that the Act does not provide or furnish any ascertainable standards upon which the Commission would act, and criticize the terms "the act of coercing", "threatening to cancel any franchise", "as unfairly", "without due regard to the equities of said dealer", and "without just provocation", and such statements as are in Section 59-1714. We have carefully, as we have said before, read and re-read some two or three times the specific provisions of this Act and it seems to us that the application of these terms objected to can be fairly administered by the Commission in applying the ordinary meaning of such terms to them. The authors of 50 Am.Jur., page 489, make this statement:

> "* * * A statute is not necessarily void merely because it is vague, indefinite, or uncertain, or contains terms not susceptible of exact meaning, or is stated in general terms, or prescribes a general course of conduct, or does not prescribe boundaries, or is imperfect in its details, or contains errors or omissions, or because the intention of the legislature might have

> been expressed in plainer terms, and questions may arise as to its applicability, and opinions may differ in respect of what falls within its terms, or because the statute is difficult to execute."

Of course, to this statement there are numerous respectable authorities cited from various jurisdictions in the country.

A rather vicious attack is made upon the Section of the Act (59-1703) which makes the Commission consist solely of dealers who are selected by the Governor from a list submitted by the Tennessee Automotive Association. The argument is, and, at least one of the briefs makes abrupt apologies to the present members of the Board for making this attack as not reflecting on them particularly, that by the very nature of a Board thus made up, the Board is biased and partial. It is said such a nonjudicial body which exercises at least quasi-judicial functions should not be allowed. We think the attack on this Section of the Act is entirely unjustified. As far as we know, our investigation certainly shows that practically all the regulatory boards which cover most everything today in the State are made up of members of the profession which that board governs. The reason for this is perfectly obvious.

The Act now being questioned, to our minds, is closely related to the regulatory act regulating real estate agents and salesmen. They have a board which regulates, licenses, etc., as this one does, made up of people with knowledge of their profession. This Court in Prosterman v. Tennessee State Board of Dental Examiners, 168 Tenn. 16, 73 S.W.2d 687, held that identical provisions as to the dentists being members of these boards (Code 1932, § 6941 et seq.), as the automobile people are here, was not violative of Article 1, Section 8 of our Constitution, that no man shall be

seized or deprived of property but by judgment of his peers, etc.; that the statute likewise did not violate Article 1, Section 17 of the Constitution in that the courts should be open to every person injured; and that it did not violate Article 6, Section 11 of our Constitution, providing that no judge should preside over a trial or a cause or event in which he may be interested. The same reasoning applies to this board as applied in the Prosterman case. We could extend the reasons at length but we think they are obvious and it is not necessary to do so.

It is assigned as error and argued at length that the Legislature has conferred upon this board legislative power which of course it cannot do. We do not think so. The Legislature here has conferred upon this agency the right to enforce and administer this particular statute, and the statute in effect gives direction to such agency so that it may carry out the purpose of the Legislature as shown by the Act. This Court in Large v. City of Elizabethton, 185 Tenn. 156, 203 S.W.2d 907, pointed out that the Legislature may confer jurisdiction upon a board in the administration of a statute, which the Legislature enacts and vests in that board the power and authority to adjudicate all matters arising under the statute. There is nothing unconstitutional or wrong in what was done in this particular case. It has long been settled in this State that under the police power the Legislature may extend to these boards or commissions the right to administer regulatory laws. This Court long before any of the present members were on it in Rushing v. Tennessee Crime Commission, 173 Tenn. 308, 117 S.W. 2d 4, 7, said this:

> "No restraint is imposed by the Constitution upon the power of the Legislature to create boards and commissions as the instrumentalities of government nor is there any restraint upon the power to

> provide means through which such boards and commissions may accomplish the purpose for which they are created."

It is argued very ably on appellee's side of this lawsuit that there is no procedure provided in the statute for hearings. The statute provides that there may be a hearing officer and, then without saying how it gets to the board, the statute says what the board may do about it. It is argued, of course, that there is no connection between the two and that there is no way provided to get the matter from the hearing officer to the board. The hearing officer makes up the record and passes it to the commission with his recommendation. The statute, of course, does not have to say in so many words that there will be exceptions. This follows as a matter of course.

It is argued on behalf of the appellees that there is no procedure provided for a hearing provided a license is not granted or taken away or whatnot herein. The Act provides for a hearing officer who may hear these things and make certain findings and conclusions thereon. The Act does not in so many words say how then it gets from the hearing officer to the commission, but it does provide that the commission may hear this and what they shall do, etc. The leaving out of these things in the Act does not void the Act, because it must be assumed that if there are any exceptions to the hearing officer's findings then it is on these exceptions that the commission will act. Clearly the whole import of the Act is that this is true. There can be no other conclusion from it. In Richardson v. Reese, 165 Tenn. 661, 57 S.W.2d 797, this Court held that the mere naked provision for a hearing implies a hearing with all requirements of due process of law. The Act provides that after the commission has acted this decision of the commission is subject to review

by the Circuit Court of Davidson County (under Section 27-901 et seq., T.C.A.). In other words, the same Section as is applicable to other regulatory boards. Such an Act is not unconstitutional when it does allow the matter to be heard, findings made, etc., and then to be heard in court. This is true, that is, that there is nothing unconstitutional about it when an appeal to the court is provided. Nelsen v. Tilley, supra, and 46 Am.Jur., supra.

Much argument is leveled at the provision of the Act, which attempts under the State's police power in enacting the Act, to protect automobile dealers against unfair dealing on the part of automobile manufacturers. This Court in Harbison v. Knoxville Iron Co., 103 Tenn. 421, 53 S.W. 955, 960, 56 L.R.A. 316, sixty years ago enunciated a principle of law (following other authorities) which is clearly applicable to the present Act. This is one of the best opinions we have read, ancient or modern, on the due process clause of the Federal Constitution and Article 1, Section 8 of our Constitution. Among other things, the Court in the Harbison case said:

> "* * * The legislature, as it thought, found the employé at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the act and entitles it to a place on the statute book as a valid police regulation."

Of course, the argument against the Act in the Harbison case is the same as the argument here, that it violated the right to contract as they pleased. This contention was answered to the contrary to those making the argument, and on the basis of the quotation last above the Act and this particular part of it was affirmed. The Court quoted from Holder v. Hardy, 169 U.S. 366, 391, 18 S.Ct. 383, 42 L.Ed.

780, in answer to this argument, and this quotation is equally applicable today in the present suit.

This identical provision was approved in the Wisconsin case of Kuhl Motor Co. v. Ford Motor Co., supra, and in the opinion that case quotes from Ford Motor Co. v. United States, 335 U.S. 303, 323, 69 S.Ct. 93, 103, 93 L.Ed. 24, among other things, this: "The dealers are thus economic dependents of the company whose cars they sell."

We are satisfied after reading the matter and studying it for days that there is no unconstitutionality in this provision.

Of course, as we said in the outset these things do not express our personal views, but as we see it, from our duty in interpreting an Act of the Legislature, giving them the legal rights and duties that are theirs as set forth in Cosmopolitan Life Ins. Co. v. Northington, 201 Tenn. 541, 300 S.W.2d 911, the Legislature has determined that these things are necessary. We think that they clearly come within the police power and are entirely different from situations treated of in the Livesay case, supra.

We do not intend to encroach upon the duties and prerogatives of the legislative branch, intentionally. There has been entirely too much of this in recent times. Our Constitution, Article 2, Section 2, provides that no persons belonging to one department shall exercise power properly belonging to the other; Article 2, Section 3 provides that the legislative authority is vested in the General Assembly. We to our utmost satisfaction have determined, for reasons hereinabove, that the enactment here was in the legislative authority, under the police powers, and it is not arbitrary or capricious. Thus it is that we must sustain the legislation.

The last section of the Act contains a severability clause. In other words, if there is any section or sentence or clause or phrase or whatnot in the Act that is unconstitutional it

is provided in this Section that such will not affect the validity of the remaining portions of the Act. Of course, the rule is, that when the Legislature so provides if a portion is constitutional and it can be separated from the other portions of the Act, and it further appears that the unconstitutional part did not constitute such an inducement to the passage of the other parts of the Act, and it would have been passed without it, then part of it may be rejected and part of it upheld.

We have concluded after very careful study that subdivision (2) of subsection (h) of Section 59-1714, T.C.A., is arbitrary and capricious and cannot be used for a ground for denial, suspension or revocation of license. We have likewise concluded that subsection (5) under (h) of the same Code Section is not a constitutional enactment. It does not in any way, as we see it, pertain to the economy, economic conditions of the parties or aid the welfare or whatnot in any particular. The first excluded subdivision, if carried to its logical conclusion, could merely be salesmanship. If in this clause the word "inducement" had been left out and had left merely the word "coercion" it would have had an entirely different meaning and might have been all right. Since inducement clearly means the art of selling, etc., we think that these two sections of the Act should be stricken. It is perfectly obvious that the Act is entire and a full act and the part we have stricken does not affect the main purpose of the Act or any portion of it at all. Therefore, we uphold the constitutionality of the Act.

The result is that the decree of the Chancellor will be reversed and the cause remanded to that court for further proceedings. Accrued costs are adjudged against the appellee, Ford Motor Company.

PREWITT, C. J., not participating.

APPENDIX B

On Petition to Rehear

BURNETT, Justice

There has been presented to us a petition to rehear herein by the Ford Motor Company, which is in effect rather undignified and pedagogical. Regardless of this fact, we have given the petition very careful and thorough consideration.

The petition basically is filed because our decision "makes it imperative as a condition for review by the Supreme Court of the United States, for the Court to either act or refuse to act upon the validity of the legislation under the Constitution of the United States, both with reference to the previous insistence and contentions by your Petitioner * * *"

The insistences then made are that the Act is void because it is contrary to the Fourteenth Amendment of the United States Constitution; that as construed and applied by this Court it is void and contrary to the Constitution of the United States and more particularly to Article I, Section 10 of the Constitution of the United States, in that as we have construed the Act it constitutes a bill of attainder, is an ex post facto law, and a law which impairs the obligations of contracts, entered into and existing prior to the passage of the legislation. We are unable to perceive these infirmities.

We in the original opinion have amply responded to the insistence that the Act is void because contrary to the Fourteenth Amendment of the United States Constitution. There are no new authorities cited, and the petition merely cites cases and refers to the original brief which we considered very thoroughly by reading at least twice.

Appendix B—On Petition to Rehear

The other insistence is that it violates Article I, Section 10, of the Constitution of the United States in that it "impairs the obligations of contracts and is an ex post facto law * * *" In Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc., cited in our original opinion, that court held that a Minnesota statute making it unlawful for any motor vehicle manufacturer to cancel the franchise of retail dealer without just cause was a valid exercise of the state police power and was not repugnant to Article I, Section 10, of the United States Constitution. That court cited in support of its holding Manigault v. Springs, 199 U.S. 473, 26 S.Ct. 127, 130, 50 L.Ed. 274, and a host of other cases. Insofar as it is applicable (we consider it an absolute answer to the question here made) the court has this to say:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are where parties enter into contracts, perfectly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic; in other words, that parties, by entering into contracts, may not estop the legislature from enacting laws intended for the public good."

Appendix B—On Petition to Rehear

In our original opinion for reasons which we think are valid, we held that the enactment of the statute herein was within the power of the Legislature under its police power to enact. We cited various cases in support of our holding. There were none so far as we could find, or have been cited by able counsel, holding that it is not within the police power of the Legislature to pass such legislation as this.

We have carefully considered the entire matter and for the reasons expressed must overrule the petition to rehear.

APPENDIX C

Order of Supreme Court of Tennessee

FILED
March 15 1960

FORD MOTOR COMPANY

Vs. 37455 Davidson Equity

CHESTER R. PACE, etc. et al Reversed and Remanded.

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed and that this cause be remanded to the Chancery Court of Davidson County for further proceedings in accordance with the Court's opinion, a certified copy of which will accompany the procedendo on the remand; and for the collection of the cost of the Court below; for all of which let procedendo issue.

The cost of the appeal will be paid by the Ford Motor Company, principal; and F. A. Berry and Cecil Sims, sureties; for which execution may issue from this Court. 3/11/60.

APPENDIX D

Opinion of Hon. Ned Lentz, Chancellor

FORD MOTOR COMPANY	IN THE CHANCERY COURT,
vs. No. 80109	PART ONE,
CHESTER R. PACE	AT NASHVILLE.

MEMORANDUM

This Court is of the opinion that Chapter 79, Public Acts of 1955 is unconstitutional. Complainant's bill is sustained, cross-complainant's cross-bill is dismissed, and cross-complainant is taxed with the costs.

The above opinion is based upon the conclusion that the act is an invalid exercise of the police power of the State, being in violation of Article I, Section 8, and also Article II, Section 8 of the Constitution of the State of Tennessee. The act imposes unreasonable and unnecessary restrictions upon common, lawful occupations; the act does not contain adequate standards to guide and control the Board created under the act.

Our Supreme Court has ruled in *Phillips vs. State*, 304 S.W. (2d) 614 that:

> "(3) This police power of the State embraces all matters reasonably 'deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.' Darbison v. Knoxville Iron Co., 103 Tenn. 421, [illegible] 442, 53 S.W. 955, 960, 56 L.R.A. 316, including the domestic peace, the private happiness or public welfare of the people.' Lonas v. State, 50 Tenn. 287, 310. It is not limited to regulations 'in the interest of public health, safety and morals.' Nashville, C. & St. L. Railroad v. Walters, 294 U. S. 405, 429, 55 S. Ct. 486, 495, 79 L. Ed. 949, 963."

Appendix D—Opinion of Hon. Ned Lentz, Chancellor

The question then presented is whether or not the act is necessary or expedient and has a real or substantial relationship to the object sought to be obtained.

Certainly this act bears no conceivable relationship to the public morals, domestic peace, private happiness, comfort, or the public health. This then leaves the question as to whether or not the act bears a reasonable relationship to the public welfare and safety.

The contention is made by the defendants that the act is in the interest of the public safety in that without the act improperly serviced cars would be sold to the public, thereby endangering the public. However, the act in no way regulates or controls the servicing of automobiles. There is no requirement in the act that the dealer shall service or inspect, no authority given the Commission to require that the dealer service or inspect, and no power given to the commission to revoke a dealer's license for failure to service or inspect a new vehicle. A licensed dealer is not required by the act to be a mechanic, or even to employ a mechanic. Thus, it could only be by a far stretch of the imagination to say that the act had any reasonable relationship to public safety.

Where does the public welfare fit into the picture? The act licenses and then regulates motor vehicle manufacturers, distributors, dealers, salesmen and their representatives. After the licensing, the act regulates the location of the business and its salesmen. The act then attempts to regulate the manufacturer, the dealers and the salesmen in their own business.

The Court is of the opinion that the protection of the public health, safety, welfare or morals of the people of Tennessee do not require the licensing, regulation, or interference with the said automotive business. This regulatory board is vested with such power that it would control the automotive business in the entire State of Tennessee. With

its power to revoke it is not inconceivable that the board could revoke the license of each and every automobile manufacturer in the State of Tennessee. It appears to this Court that this great power to revoke or suspend a manufacturer's license could do irreparable damage to many, if not to all dealers, and to the public. If complainant's license should be revoked or suspended on the complaint of the defendant, damage could be done to the owners of Ford products and all Ford dealers in this State. Even a short suspension could put many dealers completely out of business, and thousands of Ford product owners would be without service and parts for their Ford products. Limiting the right of manufacturers to weed out inefficient dealers and those who fail to offer proper service to customers could certainly harm the public. Curtailing the right of manufacturers to require dealers to maintain a proper repair and service department in order to give satisfactory service will harm, not benefit the public. The denial or revocation of the license of a manufacturer for whatever reason would have the result of completely shutting off the opportunity of the public to buy its motor vehicles in the State and of preventing the establishments of plants and branches in Tennessee, —all of which would be to the great disadvantage of the general public.

The act (T. C. A. 59-1701) contains the following:

LEGISLATIVE FINDINGS AND DECLARATION.--

> "The legislature finds and declares that the distribution and sale of motor vehicles in the State of Tennessee vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in Tennessee *in order*

> *to prevent frauds, impositions and other abuses upon its citizens.*" (Emphasis supplied.)

Thus the stated purpose of the act was to prevent frauds and abuses upon the public. If this be the true purpose, the act still cannot stand. The opinion of Justice Tomlinson in the case of *Livesay vs. Tennessee Board of Examiners in Watchmaking* (322 S.W.2d 209) contains the following statement:

> "And, if [redacted]e opportunity for a dishonest person in pursuit of a private occupation to defraud his customer is to become a justification for the regulation under the police power rule of an otherwise private occupation, then the Legislature may well regulate every conceivable business, and 'the claim of the police power rule would . . . become . . . a delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint.' State v. Greeson, 174 Tenn., 178, 191, 124 2d 253, 258."

This Court further feels that the act arbitrarily interferes with and imposes unreasonable and unnecessary restrictions upon a lawful and common occupation. The Court is of the opinion that automobile manufacturers and dealers are engaged in a common vocation in which each has a constitutional right to engage. As stated by Justice Tomlinson in the Livesay case, supra:

> "(3) Our statute requires of a would-be repairer of watches such general and technical education 'as the board shall deem necessary'. He must likewise satisfy it that he is a person of good character. He must pass such examination on the subject as the board may give, and likewise give a physical demonstration of his talents as a watch repairer. These requirements would have the effect of preventing many would-be repairers of watches from entering that old and 'innocuous' occupation. Yet, this

> Court is entirely unable to imagine how such requirements at all promote the general welfare or protect the public morals, health or safety, or have any real tendency to those ends. Such results not appearing, in so far as this Court can see, it follows that its plain duty is to adjudge this statute unconstitutional because it 'may deny some citizens their inherent right to earn their livelihood in a private field of work, thus depriving them of a valuable property right without due process of law', quoting from the Oklahoma case of Whetsel v. Wood, supra (207 Okl. 193, 248 P. 2d 615)." See Campbell v. McIntyre, 165 Tenn. 47.

The act violates due process clause because of vagueness and uncertainty of its terms.

The provisions of Section 5 (h) (4), (T.C.A. 59-1714) specifying the grounds upon which a manufacturer's license may be revoked, furnish no ascertainable standards. The terms, "the act of coercing", "threatening to cancel any franchise," "as unfairly," "without due regard to the equities of said dealer and without just provocation" cancel the franchise or refuse to renew a franchise, are all indefinite and vague. The act is also vague and uncertain as to the statutory qualifications for a license, as there are no standards for determining who is and who is not entitled to a license. The Commission is not given any guidepost, and the act may then become whatever the members of the Commission decide it should mean.

The Court in view of the above does not consider it necessary to pass upon other questions raised in this cause.

Decree accordingly.

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NED LENTZ, CHANCELLOR

This October , 1959.

APPENDIX E

Tennessee Motor Vehicle Sales Licenses Act

[From Tennessee Code Annotated]

CHAPTER 17—MOTOR VEHICLE SALES LICENSES

59-1701. Legislative findings and declaration.—The legislature finds and declares that the distribution and sale of motor vehicles in the state of Tennessee vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in Tennessee in order to prevent frauds, impositions and other abuses upon its citizens. [Acts 1955, ch. 79, § 1.]

59-1702. Definitions.—The following words, terms, and phrases, when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Motor vehicle" means any motor driven vehicle of the type and kind required to be registered and titled under chapters 1 to 6, inclusive, of this title.

(b) "Motor vehicle dealer" means any person, firm, association, corporation, or trust not excluded by subsection (c) of this section, engaged in the business of selling, soliciting, or advertising the sale of motor vehicles.

(c) The term "motor vehicle dealer" does not include the following:

(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court; or

(2) Public officers while performing or in the operation of their duties; or

(3) Employees of persons, corporations, or associations enumerated in paragraph (1) of this subsection when engaged in the specific performance of their duties as such employees.

(d) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles.

(e) "Commission" means the Tennessee motor vehicle commission created by this chapter.

(f) "Manufacturer" means any person, firm, association, corporation, or trust resident or nonresident who manufactures or assembles new and unused motor vehicles.

(g) "Distributor" or "wholesaler" means any person, firm, association, corporation, or trust, resident or nonresident who in whole or in part sells or distributes any new and unused motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(h) "Factory branch" means a branch office maintained by a person, firm, association, corporation, or trust who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or in part its representatives and shall further include all sales promotion organizations whether the same be a person, firm or corporation which is engaged in promoting the sale of new and unused motor vehicles in Tennessee of a particular brand or make to motor vehicle dealers.

(i) "Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for the same purpose a factory branch is maintained.

(j) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of his, its, or their motor vehicles or for supervising or contacting his, its, or their dealers or prospective dealers.

(k) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(l) "Automobile auction" means any person, firm, association, corporation, or trust resident or nonresident who is engaged in the business and/or providing facilities for the purpose of selling, soliciting or advertising the sale of motor vehicles and/or providing a place of business or facilities for the exchange of motor vehicles on the wholesale level by and between duly licensed motor vehicle dealers and/or consignment of motor vehicles for the purpose of sale by any government or political subdivision, financing institutions and leasing firms, and/or acting as an agent for the purchaser or seller of motor vehicles. [Acts 1955, ch. 79, § 2; 1957, ch. 56, §§ 1-3; 1959, ch. 25, §§ 1, 2.]

59-1703. Motor vehicle commission—Appointment and qualifications of members.—There is hereby created the Tennessee motor vehicle commission to be composed of one (1) member from each of the nine (9) congressional districts of the state, and a chairman to be selected from

the state at large, all to be selected and appointed by the governor of the state of Tennessee from such list of properly qualified candidates, not less than twenty (20) in number and including at least two (2) from each congressional district, as may be furnished to the governor by the Tennessee automotive association. Each of the commissioners thus appointed shall, at the time of their appointment, be a resident in good faith of the congressional district from which he is appointed, except the chairman, who shall be a resident in good faith of the state of Tennessee; and each shall be of good moral character, and each shall have been actually engaged in the manufacture, distribution, or sale of motor vehicles in the state of Tennessee for not less than five (5) consecutive years next preceding such appointment, and each must have the necessary qualifications for a due and proper license under this chapter, and be a holder of such a license at all times while a member of said commission. Being engaged in more than one (1) of such pursuits shall not disqualify a person otherwise qualified from serving on said commission. [Acts 1955, ch. 79, § 3.]

59-1704. Terms of members—Oath of office.—The term of the chairman shall be coterminus with that of the governor, making the appointment and until a successor to the chairman is appointed and qualifies. The terms of office of the members first appointed to the commission shall be as follows: The members appointed from the first, fourth, and seventh congressional districts shall serve until June 30, 1956; the members appointed from the second, fifth, and eighth congressional districts shall serve until June 30, 1958; and the members appointed from the third, sixth, and ninth congressional districts shall serve until June 30, 1960, provided, however, that each member shall serve until his successor is appointed and qualifies. There-

after, the term of office of each member of the commission other than the chairman shall be for six (6) years. In the event of the death, resignation or removal of any person serving on said commission, the vacancy shall be filled by appointment, as aforesaid, for the unexpired portion of the term. The commission shall meet at Nashville and complete its organization immediately after the entire membership thereof has been appointed and is qualified. The chairman and each member of the commission shall take and subscribe to the oath of office required of public officers. [Acts 1955, ch. 79, § 3; 1957, ch. 56, § 4.]

59-1705. Compensation of members—Expenses.—The chairman and members of said commission shall receive ten dollars ($10.00) per diem for each and every day actually and necessarily spent in attending the meetings of the commission and shall be reimbursed for subsistence and traveling expenses necessarily incurred in the performance of their duties hereunder; provided that such per diem payments shall not exceed the sum of two hundred dollars ($200) per annum to any one (1) person. [Acts 1955, ch. 79, § 3.]

59-1706. Executive director—Appointment—Bond—Office—Seal.—The commission shall appoint a qualified person to serve as executive director thereof, to serve at the pleasure of the commission, and shall define and prescribe his duties. The executive director shall be in charge of the commission's office and shall devote such time to the duties thereof as may be necessary and before entering upon such duties he shall take and subscribe to the oath of office and execute bond to the state of Tennessee in the principal sum of ten thousand dollars ($10,000) conditioned upon faithful performance of duties and accounting for all funds

coming into his hands by virtue of his office. The salary of the executive director shall be fixed by the commission with the approval of the governor but shall in no event exceed the amount of the fees received by the commission and paid into the treasury as provided in § 59-1708 hereof. Said commission shall employ clerical help and incur such expenses as may be necessary for the proper discharge of its duties under this chapter. The commission shall maintain its office and transact its business in Nashville, and it is authorized to adopt and use a seal. [Acts 1955, ch. 79, § 3; 1959, ch. 25, § 3.]

59-1707. Powers of commission—Regulations—Enforcement.—The commission is hereby vested with the powers and duties necessary and proper to enable it to fully and effectively carry out the provisions and objectives of this chapter and is hereby authorized and empowered to make and enforce all reasonable rules and regulations and to adopt and prescribe all forms necessary to accomplish said purpose and the enumeration of any power or authority shall not be construed to deny, impair, disparage, or limit any others necessary to the attainment thereof. A copy of all rules and regulations adopted by the commission shall be approved by the attorney-general and filed and recorded in the office of the secretary of state, as required by law and the same may be amended, modified, or repealed from time to time. [Acts 1955, ch. 79, § 3.]

59-1708. Disposition of fees and charges.—All fees and charges, under the provisions of this chapter, shall be collected and received by the executive secretary of the commission and by him paid into the treasury of the state. [Acts 1955, ch. 79, § 3.]

Appendix E—Tennessee Motor Vehicle Sales Licenses Act

59-1709. Activities for which license required.—(a) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a manufacturer, distributor, or wholesaler, factory branch or distributor branch, factory representative or distributor representative in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(b) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or act as a motor vehicle dealer in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(c) It shall be unlawful and constitute a misdemeanor for any person to engage in business as, serve in the capacity of, or act as a motor vehicle salesman in this state without first obtaining a license therefor as provided in §§ 59-1710—59-1713.

(d) On or after July 1, 1959, it shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation, or trust to engage in business as, or act as an automobile auction in this state without first obtaining a license therefor as provided in this section.

(e) All licenses issued under the provisions of this chapter to automobile auctions shall expire on June 30th following the date of issuance.

(f) For each automobile auction selling motor vehicles and/or acting as an agent, one hundred dollars ($100).

(g) The license issued to each automobile auction shall specify the office location or branch thereof, and the Commission shall cause each automobile auction or branch thereof to post bond in the amount of twenty-five thousand dollars ($25,000).

The commission shall require all automobile auctions to file such bonds with the executive director upon application for license, and such bonds shall meet specifications as may be required by the commission. [Acts 1955, ch. 79, § 4; 1959, ch. 25, § 4.]

59-1710. Additional licenses required — Requirements as to compensation, employment and licensing of salesmen—Penalty for violation.—(1) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one of the capacities for which a license is required under § 59-1709 or having more than one place where such business is carried on or conducted shall be required to obtain and hold a current license for each thereof, in which he, it or they are engaged.

(2) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust and/or motor vehicle dealer to engage, hire, or contract for the services of any person for the purpose of selling motor vehicles and/or acting in the capacity of a motor vehicle salesman, without first determining that such person is duly licensed as a motor vehicle salesman as provided for in this section.

(3) It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation, or trust and/or motor vehicle dealer to give, pay or in any other manner compensate any person or persons for services rendered as a motor vehicle salesman, without first engaging and/or employing such person or persons in the capacity of a motor vehicle salesman.

(4) It shall be unlawful and constitute a misdemeanor for any duly licensed motor vehicle salesman to sell, attempt

or offer to sell for compensation any motor vehicle of any type or kind, for any person, firm, association, corporation, or trust and/or motor vehicle dealer, unless otherwise being duly employed in the capacity of a motor vehicle salesman, for such person, firm, association, corporation, or trust and/or motor vehicle dealer, offering or holders of such motor vehicles for sale. [Acts 1955, ch. 79, § 4; 1959, ch. 25, § 5.]

59-1711. Application for license—Expiration.— Applications for licenses required to be obtained under the provisions of this chapter shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the commission and furnished such applicants and shall contain such information as the commission deems necessary as to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for.

The commission shall require on such application or otherwise, information relating to the applicant's financial standing, the applicant's business integrity, whether the applicant has an established place of business and is primarily engaged in the pursuit, avocation or business for which a license or licenses is applied, and such other pertinent information consistent with the safeguarding of the public interest and public welfare.

Further, all applications for a license as a motor vehicle dealer shall show upon its face whether the applicant proposes to sell only used motor vehicles or both new and used motor vehicles. Provided, however, that nothing herein shall be construed to make it unlawful for any person to engage in business as a salesman on a part time basis.

All such applications for license or licenses shall be accompanied by the appropriate fee or fees therefor in ac-

cordance with the schedule thereof set out in § 59-1712. In the event any such application is denied, and the license applied for is not issued, seventy-five per cent (75%) of the license fee shall be returned to the applicant.

All licenses issued under the provisions of this chapter to manufacturers, distributors, or wholesalers, factory branches, distributor branches, factory representatives, and distributor representatives shall expire on June 30th following the date of issuance. All licenses issued under the provisions of this chapter to motor vehicle dealers shall expire on August 31st following the date of issuance. All licenses issued under the provisions of this chapter to motor vehicle salesmen shall expire on December 31 following the date of issuance.

The Tennessee motor vehicle commission shall issue a certificate of license to an applicant for the sale of motor vehicles at retail only if he owns or leases and/or rents a permanent, properly identified location wherein there are facilities to display and repair functional and nonfunctional parts of automobiles and where replacement parts, repair tools and equipment to service automobiles are kept, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business, and such place shall not be construed to mean residence, tents or temporary stands.

An approved service contract with an established repair shop having the above repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles shall serve in lieu of an applicant's repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles, provided that such service connection is within reasonable distance from the applicant's place of business; and provided further, that such service connection guarantees in writing the making

of the repairs or replacements ordered by the duly licensed dealer. [Acts 1955, ch. 79, § 4; 1955, ch. 322, § 1; 1959, ch. 25, § 6.]

59-1712. License fees — Interest — Penalty. — The schedule of license fees to be charged and received by the commission for the licenses issued hereunder shall be as follows:

(1) For each manufacturer, distributor, wholesaler, factory branch or distributor branch, one hundred dollars ($100).

(2) For each franchised motor vehicle dealer selling both new and used motor vehicles, twenty-five dollars ($25.00).

(3) For each motor vehicle dealer selling only used motor vehicles, twenty-five dollars ($25.00).

(4) For each factory representative or distributor representative, fifteen dollars ($15.00).

(5) For each motor vehicle salesman, three dollars ($3.00).

Provided that any person, firm or corporation required to be licensed hereunder, who fails to make application for such license at the time required herein, shall, in addition to the aforesaid fees, pay interest at the rate of six per cent (6%) per annum for the period of time during which he shall operate without a proper license and, in addition thereto, shall pay a penalty of fifty per cent (50%) of the amount of the license fee which said penalty may, however, be waived in whole or in part within the discretion of the commission. [Acts 1955, ch. 79, § 4; 1957, ch. 56, § 5; 1959, ch. 25, § 7.]

59-1713. Location of business specified—Employer of salesman—Changes.—The license issued to each motor vehicle dealer, manufacturer, distributor, wholesaler, factory branch or distributor branch shall specify the location of the factory, dealership, office, or branch thereof. In case such location is changed, the commission shall indorse the change of location on the license without charge, if it be within the same county. A change to another county shall require a new license. Every motor vehicle salesman, factory representative or distributor representative shall have a license upon his person when engaged in his business and shall display same upon request. The name of the employer of such salesman, factory representative, or distributor representative shall be stated on said license and in case of a change of employer the holder of such license shall immediately mail same to the commission for its indorsement of such change thereon. A fee of one dollar ($1.00) shall be charged by the commission for indorsing each such change of employer on said licenses and said fee shall accompany the application for the change. [Acts 1955, ch. 79, § 4.]

59-1714. Grounds for denial, suspension, or revocation of license.—The commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

(a) On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established, and set out in this chapter.

(b) For fraud practiced or any material misstatement made by an applicant in any application for a license under the provisions of this chapter.

(c) For any willful failure to comply with the provisions of this chapter or with any rule or regulation adopted and promulgated by the commission under authority vested in it by this chapter.

(d) Change of condition after license is granted or failure to maintain the qualifications for license.

(e) Constant or flagrant violation of any of the rules or regulations of this commission.

(f) Being a motor vehicle dealer or a motor vehicle salesman who:

(1) Has required a purchaser of a motor vehicle as a condition of sale and delivery thereof to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided however, that this prohibition shall not apply as to special features, appliances, accessories or equipment which is ordinarily installed on the vehicle when received or acquired by the dealer.

(2) Has represented and sold as a new and unused motor vehicle any motor vehicle which has been operated for demonstration purposes or which is otherwise a used motor vehicle.

(3) Has sold or offered for sale as a new and unused motor vehicle any motor vehicle for which he cannot secure for the purchaser thereof such new car warranty as may be extended by the manufacturer of the car to the purchaser of one of its new cars, unless he shall explain to the purchaser and show on the bill of sale that the car is being sold without any warranty being extended by the manufacturer.

(4) Has no established place of business which is used or will be used for the purpose of selling, displaying, or offering for sale, motor vehicles; provided, however, that this provision shall have no application to applicants for a license to do business as a wholesale used motor vehicle dealer only.

(5) Resorts to or uses any false or misleading advertising in connection with his business as such motor vehicle dealer or motor vehicle salesman.

(6) Gives false or fictitious names or addresses for the purpose of registering the sale of a motor vehicle, or who makes application for the registration of a motor vehicle in the name of any person other than the true owner, or any other fraudulent practices to evade the meaning of this section.

(g) Being a manufacturer of, distributor, wholesaler, distributor branch or factory branch, officer, agent, or other representative thereof who has coerced or attempted to coerce any motor vehicle dealer:

(1) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts, or accessories therefor or any other commodity or commodities which shall not have been voluntarily ordered by said motor vehicle dealer.

(2) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicle as publicly advertised by the manufacturer thereof.

(3) To order for or from any person, firm, or corporation any parts, accessories, equipment, machinery, tools, appliances, or any commodities whatsoever not manufac-

tured, produced or distributed by such manufacturer, distributor, wholesaler, distributor branch, or factory branch.

(h) Being a manufacturer of motor vehicles, distributor, wholesaler, distributor branch or factory branch or officer, agent, or other representative thereof, who:

(1) Has refused to deliver to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or factory branch any motor vehicle publicly advertised for immediate delivery within sixty (60) days after such dealer's order shall have been received.

(2) Has attempted to induce or coerce, or has induced or coerced any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or factory branch, or representative thereof, or to do any other act unfair to said dealer by threatening to cancel any franchise or contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or factory branch and said dealer.

(3) Has sold or offered for sale to a franchised motor vehicle dealer any supplies, materials, or other thing of value at the time of and as a part of the negotiations for a new or renewal contract renewing or extending for an additional period of time such motor vehicle dealer's franchise agreement, regardless of whether such sale or offer of sale shall be made a prerequisite to the renewal of the franchise agreement or not.

(4) Has unfairly, without due regard to the equities of the said dealer and without just provocation, canceled the

franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this paragraph and shall constitute an unfair cancellation regardless of the terms or provisions of such franchise or selling agreement.

(5) Has refused to extend to a motor vehicle dealer the privilege of determining the mode or manner or available transportation facilities which said dealer desires to be used or employed in making deliveries of new motor vehicles to him or it.

(6) Has attempted to enter into a franchise agreement with a dealer who does not at the time of the franchise agreement have proper facilities to provide the services to his purchasers of new automobiles which are guaranteed by the new car warranties issued by the manufacturers.

(i) Being a motor vehicle automobile auction or acting as agent thereof who:

(1) Willfully permits any person or persons to sell, buy, exchange or in any other manner participate in such automobile auction sales without first determining that such person or persons are duly licensed motor vehicle dealers, and/or duly authorized agents as may reasonably be required. [Acts 1955, ch. 79, § 5; 1957, ch. 56, § 6; 1959, ch. 25, § § 8, 9.]

59-1715. Hearing mandatory—Notice—Witnesses. —The commission may deny any application for a license or suspend or revoke a license issued only after a hearing of which the applicant or licensee affected shall be given at least ten (10) days written notice specifying the reason for denying the applicant a license or in the case of a revocation or suspension, the offenses of which the licensee

is charged. Such notices may be served as provided by law for the service of notices or by mailing a copy by registered mail return receipt requested to the last known residence or business address of such applicant or licensee. The hearing on such charges shall be at such time and place as the commission may prescribe and the aforementioned notice shall further specify this time and place. If such applicant or licensee is a motor vehicle salesman, factory representative, or distributor representative, the commission shall, in like manner, also notify the person, firm, association, corporation, or trust with whom associated or in whose association he is about to enter. The commission shall have the power to compel the production of records and papers bearing upon the complaints. The commission shall have the power to subpoena and bring before it any person in this state or take testimony of any such person by deposition in the same manner as prescribed by law in judicial procedure before the courts of this state. Any party to such hearing shall have the right of the attendance of witnesses in his behalf upon designating to the commission the person or persons sought to be subpoenaed. If the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to applicant, and if the commission shall determine that any licensee is guilty of violation of this chapter his or its license shall be suspended or revoked. [Acts 1955, ch. 79, § 6.]

59-1716. Hearing officer—Findings—Concurrence by commission.—All hearings provided for in §§ 59-1715—59-1717 shall be held by a hearing officer designated by the commission, who shall be either a member of the commission or its executive secretary and who shall make findings of fact, conclusions of law, and a proposed order based thereon.

If the commission concurs it shall issue the order, or it may, upon review of the record, make such findings, conclusions, and issue such order as in its discretion the record justifies. [Acts 1955, ch. 79, § 6.]

59-1717. Judicial review.—The decision of the commission in granting or refusing to grant an application for a license or in suspending or revoking a license may be reviewed in the circuit court of Davidson County as provided in chapter 9 of title 27. [Acts 1955, ch. 79, § 6.]

59-1718. Violations — Penalty. — Unless another penalty is in this chapter, or by the laws of this state provided, every person guilty of a violation of any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500), or imprisonment for not more than six (6) months, or both. [Acts 1955, ch. 79, § 7.]

59-1719. Provisions cumulative.—The provisions of this chapter shall be cumulative to existing laws. [Acts 1955, ch. 79, § 8.]

59-1720. Receipts and expenditures.—The commission shall pay alll money received as fees and charges into the state treasury and the budget director shall make such allotments out of the general fund as he may deem proper for the necessary and proper expenses of said commission and no expenditure shall be made by said commission unless and until such allotment has been made by the budget director. Such allotment shall be disbursed under the general budgetary laws of the state of Tennessee. [Acts 1955, ch. 79, § 9.]

APPENDIX F

Formal Complaint of Cocke County Motor Company

TENNESSEE MOTOR VEHICLE COMMISSION
STATE OFFICE BUILDING
NASHVILLE, TENNESSEE

FORMAL COMPLAINT

Firm Name COCKE COUNTY MOTOR COMPANY
Firm Making Complaint

609 W. Broadway
Street Address

License No. D-805

Newport (City or Town) | Cocke (County) | Tennessee (State)

- ☐ Manufacturer
- ☐ Distributor or Wholesaler
- ☐ Factory Branch
- ☐ Distributor Branch
- ☒ Franchised Dealer
- ☐ Used Car Dealer

CHECK BUSINESS

GIVE THE CORRECT NAME AND ADDRESS OF THE FIRM, PERSON OR PERSONS AGAINST WHOM THIS COMPLAINT IS FILED:

FORD MOTOR COMPANY
Dearborn, Michigan

RELATE IN DETAIL THE NATURE OF COMPLAINT: These charges are brought pursuant to THE TENNESSEE DEALER-MANUFACTURER LICENSING LAW, as set forth in Sections 1701-1720, inclusive, Title 59 of Tennessee Code Annotated.

Cocke County Motor Company will be referred to in this complaint as "The Dealer" and Ford Motor Company will be referred to as "The Manufacturer".

—1—

The first complaint is based on violations of sub-sections (2) of Section (H) of Section 1714 of Title 59 of Tennessee Code Annotated, in that it is alleged that the

manufacturer has done acts unfair to the dealer by threatening to cancel the franchise or contractional agreement that existed between the manufacturer and dealer.

In support of this first complaint, it is shown as follows:

(a) That on or about July 1, 1956, Earl Sloane, assistant district sales manager of the Louisville District of Ford Motor Company, made complaint to the dealer that he was realizing too much profit from the sale of new cars and demanded that more vehicles be sold, even if the dealer had to realize much less profit from the sales. In fact, to sell more cars and trucks if only a very small profit could be made. The dealer was not realizing an excessive profit. In fact, the profits being made from the sale of new vehicles was much less in comparison with those previously demanded and allowed by the manufacturer. To have made less profit would have been almost disastrous to the financial welfare of the dealer. About said date, the said Mr. Sloane and one D. C. Burdette, district sales manager of Ford Motor Company, advised the dealer that if more sales of new vehicles were not made, the dealer's franchise and contract would have to be canceled. At the time these demands were made, the dealer was doing all within his power to sell new vehicles and the demands of these representatives of the manufacturer amounted to gross intimidation and coercion.

This was unfair, among other things, due to the fact that the manufacturer had permitted and was permitting its dealers in adjoining counties, and especially one of said counties, to invade his territory and consummate deals in which little or no profit was made. At least one of them engaged in unfair competition and unethical practices by

false and misleading advertising and doing business with known questionable characters.

(b) A Mr. Van de Vort, special field representative of the manufacturer, without the knowledge, consent, or approval of the dealer on or about the day of June, 1957 came to Newport, Tennessee and there contacted one or more persons, including Dr. Hobart Ford, and endeavored to persuade him to accept a franchise in the place and stead of the dealer. At that time no formal notice of intention to cancel the dealer's franchise had been received, and none was received until the following September.

News of this action on behalf of the manufacturer became a matter of public knowledge and as result thereof it was generally rumored that the dealer would soon be out of business and no longer a dealer of Ford products. This had a very detrimental effect upon the dealer's sales and reputation as a dealer. The public became confused as to the status of the dealer and many sales were lost as result thereof.

The dealer learned of these contacts and efforts, and this amounted to a threat or coercion to carry out the requirements of more sales of vehicles, even though he received little or no profit therefrom.

—11—

The second complaint is based on violations of sub-section (4) of Section (H) of Section 1714 Title 59 of Tennessee Code Annotated in that it is alleged that the manufacturer has unfairly, without due regard to the equity of the dealer and without just provocation, canceled the franchise of the dealer.

Appendix F—Formal Complaint of Cocke County Motor Company

In support of this complaint the dealer alleges the following:

(a) That on September 3, 1957 the manufacturer notified the dealer of the termination of his franchise in which notice he was advised that he would be permitted to file a written request for a conference with the Dealer Policy Board at Dearborn, Michigan. This request was made, and on October 14, 1957 the dealer appeared before said Board and presented such facts and evidence as obviously convinced the Board that his franchise should not be canceled. The dealer was advised to return to his business and make certain adjustments, which he did. Mr. O'Neil, a member of the Dealer Policy Board that heard the dealer's side of the issues, personally came to Newport in December, 1957 and made an investigation. The dealer was lead to believe that everything was progressing satisfactorily and thereupon the dealer with new determination entered upon his duties as a dealer, and was enjoying the best business he had experienced for a long while.

However, on March 24, 1958 the dealer was advised by Duane D. Freese, executive secretary of the Dealer Policy Board that the sales agreement between the manufacturer and the dealer, dated February 1, 1955 was terminated.

The dealer has been a franchised Ford dealer, along with his father, for 43 years. They have purchased real estate, a sales location, service department and general garage to carry on the business of a Ford dealer, in which they have invested many thousands of dollars. In addition, the dealer has purchased large amounts of equipment, parts and accessories, all of which are especially designed for the furtherance of a Ford dealership. The cancellation of the franchise will be of great monetary loss to the dealer and will in all probability result in financial disaster to him.

Appendix F—Formal Complaint of Cocke County Motor Company

During all the time the dealer has had the Ford franchise he has always endeavored to represent the manufacturer fairly. The dealer has maintained adequate facilities, including a sales and shop force and has made every reasonable effort to sell as many Ford products as possible.

The competition in the dealer's territory has been very keen and competitive, and the policy of the manufacturer in permitting other dealers, as above stated, to sell its products within his territory has been very prejudicial and harmful to him. This of course, has been responsible for any decline in sales or lack of sales on his part.

Whereupon, by reason of all of the foregoing, and other good and sufficient reasons which will be shown in proof on the hearing, the dealer requests that a hearing be set in connection with the foregoing violations, and that unless said franchise notice given by the manufacturer be canceled and rescinded, that the license of said motor company issued pursuant to said act be revoked or rescinded, and that all penalties of said act be adjudicated against the manufacturer.

[Verified May 23, 1958 by E. R. Walker, Jr. for Cocke County Motor Company.]

* * *

APPENDIX G

Excerpts from Complaint of Appellant in Chancery Court, Davidson County

* * *

VII

Complainant avers that said Chapter 79 of the Public Acts of Tennessee of 1955, and the codification thereof in the Tennessee Code Annotated, known as Chapter 17—Motor Vehicle Sales Licenses, Sections 59-1701 through 59-1720 inclusive, are wholly null, void, invalid and unconstitutional for the following reasons, among others:

1. Said Act is void and of no effect in that it is contrary to the Constitution of the United States, and more particularly to Amendment XIV thereof, and more particularly in that it seeks * * * to deprive it of liberty and property without due process of law, and deny it equal protection of the laws.

* * *

6. The Act denies complainant, and others in like situations, procedural due process of law in that it permits and authorizes the termination and cancellation of complainant's license to do business in Tennessee, and the license of its sales representatives furthering complainant's business in Tennessee upon grounds which are stated with such generality, and without statutory definition so as to apprise complainant and others of the conduct sought to be condemned thereby, and of the acts prohibited by said statute and made criminal violations by its terms.

7. The Act seeks to delegate legislative authority to the Commission to terminate the complainant's license to do business in Tennessee upon vague and general charges without proper statutory standards or definitions of the conduct prohibited contrary to substantive due process of

Appendix G--Excerpts from Complaint of Appellant in Chancery Court, Davidson County

law, and violates procedural due process of law, contrary to both the Constitution of Tennessee and the Constitution of the United States by vesting quasi judicial powers in a commission inherently biased by the mandatory qualifications for appointment, thereby permitting automobile dealers to sit in judgment upon the motives, wisdom, and equities of the action of a manufacturer of motor vehicles in seeking to assert its property and contract rights in connection with any bona fide disputes between dealers and manufacturers.

8. The provisions of said Act purport to require complainant and its representatives to obtain state licenses before conducting its interstate business in the State of Tennessee and thereby imposes unlawful burdens and restrictions on interstate commerce and are repugnant to Article I, Section 8 of the Constitution of the United States.

* * *

APPENDIX H

Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958.

Q. * * * I will ask you if you have at my request obtained from the records of the company the various applications beginning in 1955 and continuing down to the present time under which these licenses were issued and if you have the original documents before you? A. I do.

Q. For what years do you have the original applications before you? A. 1955, 1956, 1957 and 1958.

Q. Mr. Cooper, will you examine each of these applications and state whether or not on each of the applications you referred to there was a protest registered at the time of each application, and, if so, will you read the protest into the record? A. I have examined each application, and there is a protest on the back of the applications, and they read identically in each case as follows:

> "Applicant hereby protests its compliance with the requirements of the Tennessee Motor Vehicle Commission Act as a prerequisite to its continuation of business in the state of Tennessee, in addition to the qualification fees and taxes now paid for that privilege and avers that this application is filed involuntarily under duress and compulsion of the criminal and civil penalties provided by statute. Applicant further states this statute is unreasonable, discriminatory, and violative of Federal and State constitutional rights of applicant. In making this application, applicant reserves the right to contest the validity of said statute on the grounds of unconstitutionality and any other proper ground."

Excerpt from Deposition of Walter J. Cooper, General Sales Manager of Ford Division, Ford Motor Company, December 19, 1958.

Q. Mr. Cooper, was what you have just read into the record contained on every application for licenses that this company has ever presented to the state of Tennessee and on which licenses were issued? A. Yes, it was.

* * *

APPENDIX I

Excerpt from Deposition of William M. Liddon, Former Pontiac Dealer, May 7, 1959

Q. What would be the situation if the dealer disagreed with the factory representative or the field men? A. Well, the dealer then is usually subjected to threats. It depends on the season of the year as to the terminology that would be used in this threat. If it was toward the end of the model run which is the season of the year where the dealer would have the greatest resistance toward taking on more cars, because all cars sold toward the end of the model run are sold at a substantial discount and little or no profit. Then the usual threat would be unless he cooperated in taking these extra cars he would be denied proper allotment of the new car when the new model came out.

* * *

APPENDIX J

Notice of Hearing Before Motor Vehicle Commission

BEFORE THE TENNESSEE MOTOR VEHICLE COMMISSION

In the matter of

E. R. WALKER, JR.
DBA COCKE COUNTY MOTOR COMPANY
609 West Broadway
Newport, Tennessee

vs.

FORD MOTOR COMPANY
American Road
Dearborn, Michigan

NOTICE OF HEARING

Notice is hereby given that a hearing will be held on the formal complaint filed the 23rd day of May, 1958, by the Cocke County Motor Company, Newport, Tennessee. A copy of which has been served on the defendant, Ford Motor Company, Dearborn, Michigan.

You are hereby summoned to appear before me, Chester R. Pace, Hearing Officer, at ten o'clock (10) A. M. (CST) Thursday, June 26, 1958, at the office of the Tennessee Motor Vehicle Commission, B-1 State Office Building, Nashville, Tennessee.

The Complaint is hereby directed to file briefs in accordance with the rules of hearing, a copy of which is enclosed. This the 11th day of June, 1958.

TENNESSEE MOTOR VEHICLE COMMISSION
Chester R. Pace, Executive Secretary

APPENDIX K

Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959

Q. H[redacted]long were you in the automobile business as a dealer? A. I lacked two years being eligible for the Old Timers Club, that was thirty-two years. I was in it thirty years, I guess, approximately thirty years.

Q. What kind of dealership or franchise did you have? A. I had Chrysler Franchise, Dodge and Plymouth.

* * *

Q. Were you, as a dealer, ever asked to take in cars for sale that you didn't want or felt you didn't have good market for? A. Oh yes. I have many times done that. The tail end of model changes, and particularly in a territory where you have an automobile that is not popular. For instance, you take some sport model automobiles that wouldn't be popular, in fact I have had cars such as that shipped me that I didn't know I had them until I started unloading them with a bill-of-lading attached.

* * *

Q. Did you take any part in having this Act of 1955 that is involved in this case prepared before it was introduced? A. I did not.

Q. Did you work for the passage of it or so call lobby for it? A. No, sir, no lobbying. I wasn't in the Legislature any time during that time the bill was passed.

Q. Was it sponsored and put through the Legislature by the automobile dealers of Tennessee? [Over objection.] A. It was.

Q. It was? A. Yes, sir.

Q. And was it part of a rather general movement that took place in other states with other states asking for similar legislation? A. I couldn't answer that one.

Appendix K—Excerpts from Deposition of Chester R. Pace, Executive Director, Tennessee Motor Vehicle Commission, May 7, 1959

Q. But you do know that this one was sponsored, prepared and sponsored and lobbied through, I am discussing lobbied in the sense of using their influence to get it passed by the 1955 Tennessee Legislature? A. Yes, sir.

Q. Was it sponsored by the Tennessee Automobile Dealers Association or Automotive Association? A. To the best of my knowledge it was.

Q. And was Mr. Whelchel the secretary at that time? A. He was.

Q. Of the Tennessee Automobile Association? A. Yes, sir.

Q. They are the people who sponsored it and put it through in Tennessee? A. That is true.

* * *

APPENDIX L

Excerpts from Deposition of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association, June 19, 1959.

Q. Mr. Whelchel, you have already identified yourself and your position, I'm sure, in previous testimony? A. Yes, sir.

Q. Mr. Whelchel, have you in your capacity as I believe you are executive secretary? A. Executive vice-president and general manager.

Q. Executive vice-president and general manager of Tennessee Automotive Association? A. Yes, sir.

Q. Have you had occasion to investigate and become familiar with the general size of the automobile dealer industry in the State of Tennessee? A. Yes, sir.

Q. In what way did you do that? A. We sent a questionnaire out to the members of our association.

Q. And when did you send that questionnaire out? A. It was dated January 21, 1957.

Q. Now, how many members belong to your association? A. Now or then?

Q. Then. A. Approximately eight hundred.

Q. And were they new car dealers or old car dealers, or both? A. Most new car dealers. Ninety percent, I guess.

Q. Would that figure constitute most of the new car dealers in Tennessee? A. Yes, sir.

* * *

Q. I believe you requested the Governor to re-appoint as chairman Mr. Carroll G. Oakes? A. Yes, sir.

Q. He had been chairman up to that time? A. Yes, sir.

Q. And he was a licensed DeSoto-Plymouth dealer in Morristown, Tennessee? A. Yes, sir, and the T.I.A.D.A. approved it.

Appendix L—Excerpts from Deposition of David P. Whelchel, Executive Vice-President and General Manager, Tennessee Automotive Association, June 19, 1959

Q. Did the Governor re-appoint Mr. Oakes? A. No, sir, he has not yet. He has taken no action on it as of this date.

Q. Can you conveniently give us altogether at one time a list of the persons who at the present time constitute the members of the commission of the Tennessee Motor Vehicle Commission? A. Yes, I think I can. The chairman is still Carroll Oakes, because the law says he will continue to serve until his successor is qualified.

Take them by congressional districts. A. The First Congressional District, J. A. Clark, Kingsport.

Q. Describe his business. A. He is the Buick dealer there. The Second Congressional District is Roy A. Cruse, Rambler dealer, Knoxville; Third Congressional District is Eugene Calloway, Chrysler-Plymouth dealer at Cleveland, Tennessee; Fourth Congressional District is Ivan Potts, Jr., Shelbyville, Ford dealer; Fifth Congressional District is Harry Sadler, Chevrolet dealer at Goodlettsville, Tennessee; Sixth Congressional District is David Johnson, Lincoln-Mercury dealer and used car dealer at Pulaski, Tennessee; Seventh Congressional District is Fred Mitchie, used car dealer at Jackson; Eighth Congressional District is Herbert G. Roberts, Chevrolet dealer at Dyersburg; Ninth Congressional District is John E. Stamps, Oldsmobile dealer at Collierville.

* * *

APPENDIX M

Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel filed August 5, 1959.

Motion was made by Liddon, seconded by Walker, that attorney Harris draw up a resolution by direction of the Board, submitting to the Governor the names of the dealers nominated from each Congressional District, to be submitted to the Governor. This resolution was submitted to the Board and upon motion of Liddon, seconded by Roberts, that the resolution be accepted and directed that it be delivered in person to the Governor by Oakes, Bryant and Whelchel, at the earliest possible moment. The motion was passed unanimously. The resolution adopted by the Board was as follows:

"WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged with the duty of submitting the names of at least 20 automobile dealers, at least 2 of which reside in each Congressional District of the State of Tennessee, from which the Governor will appoint the Tennessee Motor Vehicle Commission; and,

* * *

"WHEREAS, the said Board of Directors of Tennessee Automotive Association at a special meeting held on March 14, 1955, considered the names of a number of automobile dealers qualified for such appointment.

"NOW, THEREFORE, BE IT RESOLVED, That the Tennessee Automotive Association certifies the following list of dealers to His Excellency, The Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, with the recommenda-

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

tion that the first name listed under each Congressional District be appointed:

FIRST CONGRESSIONAL DISTRICT

1. Carroll G. Oakes—DeSoto-Plymouth Dealer—Morristown
2. J. A. Clark—Buick-Oldsmobile Dealer—Kingsport
3. H. Garner Range, Jr.—Buick Dealer—Johnson City

SECOND CONGRESSIONAL DISTRICT

1. L. F. Buschbaum—Used Car Dealer—Knoxville
2. Paul K. Costner—Ford Dealer—Maryville
3. Roy A. Cruze—Nash Dealer—Knoxville
4. Pete Paine—Pontiac Dealer—Maryville
5. Glen Van Slyke—Ford Dealer—Oak Ridge

THIRD CONGRESSIONAL DISTRICT

1. Forrest F. Cate—Ford Dealer—Chattanooga
2. S. I. Bryant—Buick Dealer—Cleveland
3. Eugene Callaway—Dodge-Plymouth Dealer—Cleveland

FOURTH CONGRESSIONAL DISTRICT

1. John L. McCawley—Ford Dealer—Cookeville
2. Roy G. Byrn—Buick Dealer—Murfreesboro
3. Ivan Potts, Jr.—Ford Dealer—Shelbyville

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

FIFTH CONGRESSIONAL DISTRICT

1. W. M. Liddon—Pontiac Dealer—Nashville
2. Lem Stevens—Ford Dealer—Nashville
3. R. L. Parnell—DeSoto-Plymouth Dealer—Nashville

SIXTH CONGRESSIONAL DISTRICT

1. Robert Norris—Used Cars Dealer—Clarksville
2. Ed N. Parkes, Sr.—Ford Dealer—Lawrenceburg
3. J. H. Dowling—Chevrolet Dealer—Columbia
4. E. M. Adcox—Ford Dealer—Hobenwald
5. Jack Saunders—Cadillac-Oldsmobile Dealer—Clarksville
6. Lucien Caperton—Chevrolet Dealer—Lawrenceburg

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie—Used Cars Dealer—Jackson
2. Carl Tisdal—Ford Dealer—Jackson
3. Gordon J. Wilder—Chevrolet Dealer—Huntingdon
4. Neil Stroud—Chevrolet Dealer—Henderson
5. Emmett Yeiser—Chevrolet Dealer—Savannah

EIGHTH CONGRESSIONAL DISTRICT

1. John M. Walker—Chevrolet-Cadillac-Oldsmobile Dealer—Covington
2. Herbert G. Roberts—Chevrolet Dealer—Dyersburg
3. Ed Shuck—Ford Dealer—Newbern

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

NINTH CONGRESSIONAL DISTRICT

1. Lee McCormick—Chevrolet Dealer—Memphis
2. Roy Cortner—Used Cars Dealer—Memphis
3. C. W. Bond—Ford Dealer—Arlington
4. John E. Stamps—Oldsmobile Dealer—Collierville

* * *

"WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged with the duty of submitting the names of at least 20 automobile dealers, at least 2 of which reside in each Congressional District of the State of Tennessee, from which the Governor will appoint the Tennessee Motor Vehicle Commission; and, * * *

"WHEREAS, the said Board of Directors of Tennessee Automotive Association at a special meeting held on March 14, 1955, considered the names of a number of automobile dealers qualified for such appointment.

"NOW, THEREFORE, BE IT RESOLVED, That the Tennessee Automotive Association certifies the following list of dealers to His Excellency, The Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, with the recommendation that the first name listed under each Congressional District be appointed:

FIRST CONGRESSIONAL DISTRICT

1. Carroll G. Oakes—DeSoto-Plymouth Dealer—Morristown

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

2. J. A. Clark—Buick-Oldsmobile Dealer—Kingsport
3. H. Garner Range, Jr.—Buick Dealer—Johnson City

SECOND CONGRESSIONAL DISTRICT

1. L. F. Buschbaum—Used Cars Dealer—Knoxville
2. Paul K. Costner—Ford Dealer—Maryville
3. Roy A. Cruze—Nash Dealer—Knoxville
4. Pete Payne—Pontiac Dealer—Maryville
5. Glen Van Slyke—Ford Dealer—Oak Ridge

THIRD CONGRESSIONAL DISTRICT

1. Forrest F. Cate—Ford Dealer—Chattanooga
2. S. I. Bryant—Buick Dealer—Cleveland
3. Eugene Callaway—Dodge-Plymouth Dealer—Cleveland

FOURTH CONGRESSIONAL DISTRICT

1. John L. McCawley—Ford Dealer—Cookeville
2. Roy G. Byrn—Buick Dealer—Murfreesboro
3. Ivan Potts, Jr.—Ford Dealer—Shelbyville

FIFTH CONGRESSIONAL DISTRICT

1. W. M. Liddon—Pontiac Dealer—Nashville
2. Lem Stevens—Ford Dealer—Nashville
3. R. L. Parnell—DeSoto-Plymouth Dealer—Nashville

SIXTH CONGRESSIONAL DISTRICT

1. Robert Norris—Used Cars Dealer—Clarksville
2. Ed N. Parkes, Sr.—Ford Dealer—Lawrenceburg

Appenaix M—Ex.erpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

3. J. H. Dowling—Chevrolet Dealer—Columbia
4. E. M. Adcox—Ford Dealer—Hohenwald
5. Jack Saunders — Cadillac-Oldsmobile Dealer — Clarksville
6. Lucien Caperton—Chevrolet Dealer—Lawrenceburg

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie—Used Cars Dealer—Jackson
2. Carl Tisdal—Ford Dealer—Jackson
3. Gordon J. Wilder—Chevrolet Dealer—Huntingdon
4. Neil Stroud—Chevrolet Dealer—Henderson
5. Emmett Yeiser—Chevrolet Dealer—Savannah

EIGHTH CONGRESSIONAL DISTRICT

1. John M. Walker — Chevrolet-Cadillac-Oldsmobile Dealer—Covington
2. Herbert G. Roberts—Chevrolet Dealer—Dyersburg
3. Ed Shuck—Ford Dealer—Newbern

NINTH CONGRESSIONAL DISTRICT

1. Lee McCormick—Chevrolet Dealer—Memphis
2. Roy Cortner—Used Cars Dealer—Memphis
3. C. W. Bond—Ford Dealer—Arlington
4. John E. Stamps—Oldsmobile Dealer—Collierville

* * *

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

Oakes then explained that, under the staggered system of appointing members to the Tennessee Motor Vehicle Commission, that the terms of Clarke in the First Congressional District, Potts in the Fourth Congressional District and Michie in the Seventh Congressional District, would expire June 30, 1956. He pointed out that the Law requires T.A.A. to nominate dealers to the Governor for appointment on the Commission, and on his motion, seconded by Wilder, the Board nominated the following for submission to the Governor; and directed that a copy of the Resolution to the Governor be attached to it, and become a part of these minutes:

FIRST CONGRESSIONAL DISTRICT

James A. Clarke, Kingsport
Claude Hurley, Greeneville
J. L. Latimer, Jr., Kingsport
J. Lacy Myers, Newport

FOURTH CONGRESSIONAL DISTRICT

J. Ivan Potts, Jr., Shelbyville
James A. Mullican, McMinnville
James Brady, McMinnville

SEVENTH CONGRESSIONAL DISTRICT

Fred Michie, Jackson
W. Carl Tisdal, Jackson
Gordon Wilder, Huntingdon

WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, Tennessee Automotive Association is charged

Appendix M--Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

with the duty of submitting the names of automobile dealers who reside in the First, Fourth and Seventh Congressional Districts, from which the Governor will appoint one from each District as members of the Tennessee Motor Vehicle Commission, by virtue of the fact that their one year term expires June 30, 1956; * * *

WHEREAS, the said Board of Directors of the Tennessee Automotive Association at its annual summer meeting held on June 25, 1956, considered the names of a number of automobile dealers qualified for such an appointment;

NOW, THEREFORE, BE IT RESOLVED, that the Tennessee Automotive Association certifies the following list of dealers to His Excellency, the Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, from those Congressional Districts whose terms expire June 30, 1956:

1. [Illegible]
2. Claude Hurley, Ford Dealer, Greenville
3. J. L. Latimer, Jr., Chevrolet Dealer, Kingsport
4. J. Lacy Myers, Chevrolet Dealer, Newport

FOURTH CONGRESSIONAL DISTRICT

1. Ivan Potts, Ford Dealer, Shelbyville
2. James A. Mullican, Chevrolet Dealer, McMinnville
3. James Brady, Dodge-Plymouth Dealer, McMinnville

SEVENTH CONGRESSIONAL DISTRICT

1. Fred Michie, Used Car Dealer, Jackson

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

2. W. Carl Tisdal, Ford Dealer, Jackson

3. Gordon Wilder, Jr., Chevrolet Dealer, Huntingdon

* * *

President Oakes then brought up the question of TIADA members requesting T. A. A. to support an amendment to the dealer-manufacturer licensing law, giving equal representation of used car dealers, on the Tennessee Motor Vehicle Commission. Various means were discussed relative to TIADA submitting a list of nominations to the Governor for vacancies, as they occur on the Commission. There was a spirited discussion on this matter, that was participated in by practically every Director present. Liddon made a motion in three parts;

* * *

(3) That the president appoint a committee to go to and visit with the TIADA, to explain to them the reasons behind this deal, and to sell the merits of the act to the independent association, and to attempt, as far as possible, to justify in the minds of the members of TIADA, the need for a majority of franchised dealers being on the Commission, for the reasons that a higher percentage of the problems raised, are related to matters between the manufacturer and the franchised dealer, and were not related to independent dealers.

The motion was seconded by Parnell and passed with two dissenting votes.

* * *

WHEREAS, by Section 3 of Chapter 79 of the Public Acts of 1955, the Tennessee Automotive Association is charged with the duty of submitting the names of automo-

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

bile dealers who reside in the Second, Fifth and Eighth Congressional Districts, from which the Governor will appoint one from each District as members of the Tennessee Motor Vehicle Commission, by virtue of the fact that their terms of office expire June 30, 1958;

* * *

WHEREAS, at a regular meeting of the Board of Directors of the Tennessee Automotive Association, held January 15, 1957, a measure was unanimously passed by the Board, that in the future, when terms of the Commissioners on the Tennessee Motor Vehicle Commission expired that the Board of Directors of the Tennessee Independent Automobile Dealers Association would be consulted and nominations secured from them for the vacancies to be appointed; and

WHEREAS, Commissioners L. F. Buschbaum of Knoxville and L. D. Stevens of Nashville have notified the Tennessee Automotive on the Tennessee Motor Vehicle Commission representing their Congressional Districts; and

WHEREAS, the Board of Directors of the Tennessee Automotive Association, at its annual summer meeting here in Nashville on June 16, 1958, considered the names of automobile dealers qualified for such an appointment and secured from the Tennessee Independent Automobile Dealers Association, the approval of their appointments;

NOW, THEREFORE, BE IT RESOLVED, that the Tennessee Automotive Association, in full agreement with the Tennessee Independent Automobile Dealers Association, certifies the following list of dealers to His Excellency, the

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

Governor of the State of Tennessee, from which the membership of the Tennessee Motor Vehicle Commission shall be chosen, from those Congressional Districts whose terms expire June 30, 1958;

SECOND CONGRESSIONAL DISTRICT

1. Roy A. Crusé, Rambler Dealer, Knoxville
2. F. D. Eagleton, Ford Dealer, Maryville

FIFTH CONGRESSIONAL DISTRICT

1. Harry Sadler, Chevrolet Dealer, Goodlettsville
2. J. Houston King, Rambler Dealer, Nashville

EIGHTH CONGRESSIONAL DISTRICT

1. Herbert G. Roberts, Chevrolet Dealer, Dyersburg

* * *

WHEREAS, Section 3, of Chapter 79, of the Public Acts of 1955, the Tennessee Automotive Association is charged with the duty of submitting the names of automobile dealers, who in the event of death, resignation or removal of any person serving on the Tennessee Motor Vehicle Commission, the vacancy shall be filled by appointment, as aforesaid, for the unexpired portion of the term, and

WHEREAS, Hon. Robert Norris, a member of the Tennessee Motor Vehicle Commission of Clarksville, from the Sixth Congressional District, whose term expires June 30, 1960, has moved to Texas, is no longer an automobile

Appendix M—Excerpts from Exhibits 1 Through 7 to Deposition of David P. Whelchel Filed August 5, 1959.

dealer qualified to serve on the Commission, and is no longer a resident of Tennessee, and

* * *

WHEREAS, the said Board of Directors of the Tennessee Automotive Association at a regular meeting at the annual convention at the Peabody Hotel in Memphis, Tennessee on May 27, 1957, with consultation and full approval from the Tennessee Independent Automobile Dealers Association, considered the names of automobile dealers qualified for appointment in the Sixth Congressional District, to fill said vacancy, expiring June 30, 1960.

Association in consultation and with full approval of the Tennessee Independent Automobile Dealers Association, submits the following nominations of qualified automobile dealers, licensed under the Act, to His Excellency, the Governor of the State of Tennessee, for appointment for the said unexpired term:

1. David Johnson, Pulaski, Tennessee (Lincoln-Mercury—Used Car Dealer)
2. Gordon Barnes, Fayetteville, Tennessee (Used Car Dealer)
3. Hugh Brewer, Franklin, Tennessee (Used Car Dealer)

* * *

APPENDIX N

Exhibit 35 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
Intra-Company Communication

FORD DIVISION
GENERAL OFFICE
December 15, 1958

To: Mr. N. A. Smith
Office of General Counsel
Central Staff

cc: Messrs. Walter J. Cooper
E. G. Acomb
P. W. Czamanske
G. A. Schumm

SUBJECT: Vehicle Shipments to Dealers in the State of Tennessee

Pursuant to your request of Monday, December 8, we have reviewed with the districts involved the sources of supply of passenger cars and trucks shipped to dealers in the State of Tennessee during the years 1955 and 1958. This information is outlined below:

ASSEMBLY PLANT SOURCES OF SUPPLY

Cars 1955	Trucks 1955	Cars 1958	Trucks 1958
Atlanta	Dallas	Atlanta	Kansas City
Louisville	Louisville	Louisville	Chicago
Dallas	Memphis	Memphis	Louisville
Memphis	Highland Park	Mahwah	Mahwah
Dearborn	Norfolk	Norfolk	Lorain
Norfolk	Atlanta	Dearborn	Norfolk
		Kansas City	Dallas
		Lorain	Atlanta
		Wixom	
		Dallas	
		Chicago	

* * *

W. L. MATHEWS
W. L. Mathews
Distribution Department

* * *

APPENDIX O

Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY — FORD DIVISION
INTRA-COMPANY COMMUNICATION — GENERAL OFFICE

August 23, 1957

To: Mr. J. O. Wright
Subject: Cocke County Motor Company,
Newport, Tennessee

The General Sales Office recommends termination of the Ford Sales Agreement with Cocke County Motor Company, a partnership consisting of Messrs. E. R. Walker, Sr. and E. R. Walker, Jr., due to unsatisfactory performance within its single point market area.

* * *

Despite a need for and prior history of a sales force, the dealer had no salesmen and only three mechanics in 1948, shortly after the son assumed the responsibility of general manager. At that time the dealer had almost ceased used car activity and was attaining only 40 per cent of parts and 24 per cent of labor objectives.

Operations continued on a low plane through 1953 and in 1954 the District expanded upon earlier efforts to persuade the dealer to improve. It recommended the employment of two combination salesmen to supplement the efforts of the two partners, suggested incentive pay and the lowering of prices to attract and close more deals. For the year the dealer accomplished only 59 per cent of its car and 54 per cent of its truck objectives.

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

During 1955, the dealer operated with only one salesman besides the elder Mr. Walker and had no organized solicitation program for vehicles, parts or service. Though sales of trucks represented 136.7 per cent of Chevrolet registrations, car sales were only 69.3 of Chevrolet registrations.

Through April, 1956, the dealer operated at a cumulative loss of $1,565 and sold only 13 cars and 3 trucks against objectives of 20 and 8, respectively, and had closed its paint shop. In August the District held a rehabilitation meeting to present formally and to reiterate earlier recommendations. The presentations covered thirteen major recommendations, including, among others, the employment of two salesmen besides the father on an incentive pay plan, the adoption of solicitation, sales training, sales meeting, competitive pricing and follow up plans, the installation of purchase and expense control systems and the exercise of close supervision and direction of dealership sales, service and expense activities * * *.

In subsequent follow-up contracts it was determined that the dealer was following only two of the recommendations, dismissing the others as being unworkable in its trade area.

At a meeting held in February, 1957, the same recommendations were made. Again the dealer refused to commit to carrying out the recommendations and admitted to no plans for improving its poor performance and penetration * * *.

* * * major performance data are summarized as follows:

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

In 1956 and for the first five months of 1957 this dealer's sales represented only 57.7 per cent and 69.5 per cent, respectively, of Chevrolet car and 32.2 per cent and 50.0 per cent of Chevrolet truck registrations.

Comparisons of this dealer's per cent of accomplishment against car, truck, parts and labor sales objectives and returns on Guide for Dealership Investment with like accomplishments and returns for all Ford dealers in the Louisville Sales District are as follows:

Performance Against Objective	Cocke County Motor Co.		Louisville District	
	1956	5 Mos 1957	1956	5 Mos 1957
Cars	67.2	50.0	87.3	90.6
Trucks	37.0	28.6	85.1	94.1
Parts	60.1	50.0	99.1	87.4*
Labor	58.9	18.0	85.6	86.5*
Return on GDI	9.4	15.0	26.8	34.8

*Four months of 1957

From the foregoing it is evident that the dealer's performance has been at a consistently low level. Performance has declined in 1957 when the average performance of all Ford dealers with the District has improved. The dealer has failed to follow the District's recommendations designed to increase sales and has presented no plans for improvement of its own.

The file recommending termination of this dealer has been reviewed in its entirety by and has the concurrence of the Office of the General Counsel.

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

Accordingly, if you concur in the recommendation to terminate, it will be appreciated if you will approve the forwarding of a ninety day notice of termination to this dealer.

M. S. McLAUGHLIN

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

FORD DIVISION OF FORD MOTOR COMPANY

LOUISVILLE DISTRICT SALES OFFICE — P O Box 539 LOUISVILLE KENTUCKY

March 3, 1958

Mr. Duane D. Freese
Executive Secretary
Dealer Policy Board
Ford Motor Company
Dearborn, Michigan

Dear Mr. Freese:

* * *

Following is a review and comparison of sales and registrations in Cocke County, Tennessee, for 1957 and January 1958:

Sales by Cocke County Motor Co.

	Jan. thru Sept. 1957	Oct. 1957	Nov. 1957	Dec. 1957	Jan. 1958
Cars	35	1	5	4	3
Trucks	13	3	0	1	2

Registrations for Cocke County, Tennessee

	Jan. thru Sept. 1957		Oct. 1957		Nov. 1957		Dec. 1957		Jan. 1958	
	F	C	F	C	F	C	F	C	F	C
Cars	38	65	5	6	8	7	5	9	3	5
Trucks	14	18	3	1	0	0	1	4	1	4

From the above, it will be noted that since the approximate date of Mr. Walker Jr.'s visit to your office (October 2nd), a period of over four months, 13 cars and 6 trucks have been sold by his dealership. In the same period, 21 cars

Appendix O—Exhibits 27 and 32 to Deposition of Walter J. Cooper, December 19, 1958

and 5 trucks for Ford have been registered in his trade area, against 22 Chevrolet cars and 9 Chevrolet trucks. Our Field Manager secured registrations from the local court house in Newport February 27th, and they were as follows:

	Cars	Trucks
Ford	5	1
Chevrolet	1	1

In this connection, it should be noted that this dealer had sold no Ford cars and no Ford trucks through February 20th. Therefore, it is evident that the registrations are from nearby Ford dealers' sales activities.

We fully recognize the problem presented to a dealer when a nearby competitive dealer (such as the Chevrolet dealer at Mohawk, Va.) is willing to sell and trade at extremely low profit margins and have considered that in our analysis of Mr. Walker's performance. However, comparing the number of Ford cars sold by Mr. Walker in the period October 1957 through January 1958 to the Ford car registrations for the same period, it appears that he is unable to compete against his nearby Ford dealers as well. Among Louisville District dealers in this area, we do not have any that have a background or history of trading in the manner of the Mohawk Chevrolet dealer.

In the period to which we are referring (October 1957 through January 1958) the average remaining gross on cars and trucks for Louisville District dealers of the same size group as Cocke County Motors was as follows as compared to Cocke County Motors:

	Louisville Dist. Dealers (349 Mkt. Pot. and Und.r)				Cocke County Motor Co			
	Oct.	Nov.	Dec.	Jan.	Oct.	Nov.	Dec.	Jan.
Cars	148	260	298	370	502	359	320	475
Trucks	259	324	250	333	324	0	342	244

Appendix O—Exhibits 27 and 32 to Deposition of Walter I. Cooper, December 19, 1958

From the above comparison, it is apparent that this dealer has not made any particular effort to adjust his trading practices to a more competitive level.

* * *

In view of the almost complete lack of progress or efforts to improve the representation in Newport by Mr. Walker Jr. in a period of over four months, it is recommended that we proceed to terminate this dealer's Sales Agreement.

Very truly,

D. C. BURDETTE
D. C. Burdette
District Sales Manager

* * *

APPENDIX P

Sales Agreement of Cocke County Motor Company, Exhibit 14 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
LOUISVILLE DISTRICT

FORD SALES AGREEMENT

AGREEMENT made at Dearborn, Michigan, as of the first day of February, 1955, by and between Cocke County Motor Company, a (State whether an Individual, Partnership, or Corporation. If the Latter, Show Name of State in which Incorporated) partnership consisting of E. R. Walker Sr. & E. R. Walker Jr. with a principal place of business at

Newport (City and Postal Zone) Cocke (County) Tennessee (State) (Street Address) (hereinafter called "Dealer"), and Ford Motor Company, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter called "Company").

* * *

C. The attached Ford Sales Agreement Standard Provisions (Form "FD-925a JAN 55") which have been read and agreed to by each party hereto, are hereby made a part hereof with the same force and effect as if set forth herein in full.

* * *

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

* * *

FORD MOTOR COMPANY

By H. F. CHILDRESS
(Assistant Secretary)

COCKE COUNTY MOTOR COMPANY
(Dealer's Trade Name)

By E. R. WALKER, SR.
(Signature and Title) Partner

E. R. WALKER, JR. Partner

J.K.L
J.S.R.

* * *

Appendix P—Sales Agreement of Cocke County Motor Company, Exhibit 14 to Deposition of Walter J. Cooper, December 19, 1958

FORD MOTOR COMPANY
FORD SALES AGREEMENT
STANDARD PROVISIONS

* * *

11. Dealer shall:

11. (a) ***Sales and Service Responsibility.*** Develop the sale of COMPANY PRODUCTS, and render service with respect thereto * * * to the satisfaction of Company in such locality as from time to time may be designated by Company (hereinafter called Dealer's locality); but Dealer shall not be limited to Dealer's locality in making sales or in rendering service.

* * *

17. (a) ***Termination by Either Party.*** This agreement may be terminated at any time at the will of either party by notice to the other party, and such termination shall operate to cancel each order for a COMPANY PRODUCT theretofore received by Company from Dealer and unfilled * * * on the effective date of termination. In the event of termination by Dealer, notice of termination shall be given to Company not less than thirty (30) days prior to the termination date if Company so requests, and in the event of termination by Company, notice of termination shall be given to Dealer not less than ninety (90) days prior to the termination date.

* * *

APPENDIX Q

Notice of Appeal

STATE OF TENNESSEE
SUPREME COURT

FORD MOTOR COMPANY,
Complainant-Appellee,
vs.

CHESTER R. PACE, EXECUTIVE SECRETARY OF TENNESSEE MOTOR VEHICLE COMMISSION, residing and having an official office in Davidson County, Tennessee,

CARROLL G. OAKES, a resident of Hamblen County, Tennessee, Chairman of said TENNESSEE MOTOR VEHICLE COMMISSION,

L. F. BUSCHMAN, a resident of Knox County, Tennessee,

EUGENE E. CALLOWAY, a resident of Bradley County, Tennessee,

JAMES A. CLARK, a resident of Sullivan County, Tennessee,

FRED MITCHIE, a resident of Madison County, Tennessee,

ROBERT NORRIS, a resident of Montgomery County, Tennessee,

J. IVAN POTTS, JR., a resident of Bedford County, Tennessee,

HERBERT G. ROBERTS, a resident of Dyer County, Tennessee,

JOHN E. STAMPS, a resident of Shelby County, Tennessee, and

L. B. STEVENS, a resident of Davidson County, Tennessee, as members of the said TENNESSEE MOTOR VEHICLE COMMISSION,

GEORGE F. MCCANLESS, ATTORNEY GENERAL OF THE STATE OF TENNESSEE, and

E. R. WALKER, SR. and E. R. WALKER, JR., Partners doing business as COCKE COUNTY MOTOR COMPANY, residents of Cocke County, Tennessee,

Defendants-Appellants.

No. .....

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that FORD MOTOR COMPANY, the appellee above named, hereby appeals to the Supreme Court of the United States from the decree of the Supreme

Court of the State of Tennessee entered on March 11, 1960, reversing the decree of the Chancery Court of Davidson County, Tennessee, a petition for rehearing having been entertained and denied by the Supreme Court of Tennessee on May 4, 1960.

This appeal is taken pursuant to Section 1257(2) of Title 28, United States Code.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Formal complaint by Cocke County Motor Company against Ford Motor Company, subscribed and sworn to on May 23, 1958, by E. R. Walker, Jr., partner and manager, and filed with the Tennessee Motor Vehicle Commission.

(b) Notice of hearing, dated June 11, 1958, before the Tennessee Motor Vehicle Commission in the matter of E. R. Walker, Jr., d/b/a/ Cocke County Motor Company, against Ford Motor Company, to be held at 10:00 A.M. on June 26, 1958, before Chester R. Pace, Hearing Officer on the formal complaint by Cocke County Motor Company; together with a copy of the Rules of Procedure adopted by the Tennessee Motor Vehicle Commission and transmitted to Ford Motor Company along with the formal complaint.

(c) Complaint in the Chancery Court of Davidson County, Nashville, Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, et al, verified June 19, 1958, and exhibits thereto.

(d) Injunction of the Chancery Court of Davidson County, issued June 20, 1958, in the matter of Ford

Motor Company vs. Pace, et al, enjoining defendant Tennessee Motor Vehicle Commission, et al, from proceeding further in the pending hearing set before Chester R. Pace, Hearing Officer, on June 26, 1958, until such time as the constitutionality of the statute of the State of Tennessee, under which the Commission is proceeding, and the Rules of Procedure for hearing, can be considered and adjudicated, together with the Subpoena to Answer in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, dated the first Monday in April, 1958, stating the terms of said injunction.

(e) Answer and cross bill of defendants E. R. Walker, Sr., and E. R. Walker, Jr., d/b/a Cocke County Motor Company, in the Chancery Court of Davidson County in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, verified June 24, 1958.

(f) Answer of Ford Motor Company to cross bill in Ford Motor Company vs. Chester R. Pace, et al, Chancery Court, Davidson County, No. 80109.

(g) Injunction issued June 24, 1958, by the Chancery Court in Davidson County in Ford Motor Company vs. Chester R. Pace, et al, enjoining cross defendant Ford Motor Company from proceeding in any way toward the cancellation or revocation of franchise agreement of E. R. Walker, Sr., and E. R. Walker, Jr., d/b/a Cocke County Motor Company, pending the final determination of this cause.

(h) Answers of the following in Ford Motor Company vs. Chester R. Pace, et al, No. 80109, in the Chancery Court of Davidson County:

Defendant George F. McCanless, Attorney General of Tennessee;

Appendix O—Notice of Appeal

Defendants comprising the Tennessee Motor Vehicle Commission;

Intervenor-defendants Tennessee Auto Auction Association and Tennessee Independent Automobile Dealers Association; and

Intervenor-defendant Tennessee Automotive Association,

(i) Deposition of Walter J. Cooper, taken in this cause on behalf of complainant on December 19, 1953, including complainant's exhibits numbered 1 to 38, inclusive, marked therein.

(j) Depositions of John M. Walker, E. B. Smith, William M. Liddon, and Chester R. Pace, taken in this cause on behalf of the defendants on May 7, 1957, including defendants' exhibit number 1, marked in the deposition of Liddon, complainant's exhibits numbers 1 and 2, marked and filed in evidence on cross examination of witness Pace.

(k) Depositions of William M. Liddon and David P. Whelchel taken in this cause on behalf of defendant Pace on June 19, 1959.

(l) Deposition of David P. Whelchel, taken in this cause on behalf of complainant on April 29, 1959, including complainant's exhibits 1 to 7, inclusive, marked and filed in evidence in connection with said deposition.

(m) The Memorandum Opinion in the Chancery Court, Davidson County, Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, No. 80109, Hon. Ned Lentz, Chancellor, and decree of said Chancery Court in said action, Rule No. 80109.

(n) The Opinion of the Supreme Court of the State of Tennessee, in the matter of Ford Motor Company vs. Chester R. Pace, etc., et al., No. 37155, filed on March 11, 1960, on appeal from the decree of Hon. Ned Lentz, Chancellor, Davidson County.

(o) Judgment (Decree) of the Supreme Court of the State of Tennessee in Ford Motor Company vs. Chester R. Pace, etc., et al. 37155, filed March 11, 1960, reversing and remanding the decree of the Chancery Court of Davidson County.

(p) Petition to Reconsider, Rehear and Act Upon Federal Constitutional Questions filed by complainant and appellee in the Supreme Court of the State of Tennessee, March, 1960.

(q) Opinion of the Supreme Court of the State of Tennessee on Petition to Rehear, filed on May 4, 1960, in the matter of Ford Motor Company vs. Chester R. Pace, et al.

(r) Order of the Supreme Court of the State of Tennessee entered on May 4, 1960, denying complainant's Petition to Rehear in Ford Motor Company vs. Chester R. Pace, et al, etc.

(s) Procedendo in Ford Motor Company against Chester R. Pace, et al, directing the Chancery Court of Davidson County to proceed with the execution of the judgment of the Supreme Court of Tennessee.

(t) Docket entries in the Supreme Court of the State of Tennessee in this cause.

(u) This Notice of Appeal.

III. The following federal questions are presented by this appeal:

(1) Whether the provisions of the statute authorizing revocation of a manufacturer's license by the Motor Vehicle Commission are invalid, on their face or as applied to appellant, under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution, since:

(a) Bias and prejudice against the manufacturer, and pecuniary interest in issues before the Commission, are inherent in the Commission because

(i) the statute (§ 59-1703), as applied and as interpreted by the Supreme Court of Tennessee, requires that the Commission be composed exclusively of automobile dealers who are selected from a list supplied by a private association of automobile dealers; in spite of the fact that

(ii) each of the grounds for revocation specified in § 59-1714(g) and (h) of the statute involves controversies between a manufacturer and a dealer as to which dealers cannot be considered impartial and in which members of the Commission, all of whom are automobile dealers and a majority of whom are franchised new car dealers, have a pecuniary interest.

(b) The statutory language is so vague and uncertain that it is not reasonably possible to ascertain the limits of the conduct proscribed.

(2) Whether the statute is repugnant to the Commerce Clause of the Federal Constitution, since it unduly interferes with the flow of interstate commerce without clear necessity to do so by:

(a) Authorizing disruption of interstate commerce through revocation or suspension of a motor vehicle manufacturer's license to do business in the State of

Tennessee if such manufacturer shall violate the statute in its relations with a single dealer.

(b) Imposing restraints upon the volume of interstate commerce for local economic advantage by:

(i) prohibiting a motor vehicle manufacturer from requiring a dealer to order or accept delivery of "any" new vehicle not "voluntarily" ordered, even though the dealer may have failed to exert sufficient sales effort to give the manufacturer adequate representation;

(ii) requiring that a motor vehicle manufacturer deliver to Tennessee dealers all vehicles that are publicly advertised for immediate delivery, within 60 days after ordered, even though there is a shortage in interstate commerce such as occurs when new models are first introduced; and

(iii) imposing undue restrictions upon termination of ineffective dealers and upon enfranchisement of replacement dealers and additional dealers.

(3) Whether the statute, as applied to appellant, violates the Contract Clause of the Federal Constitution and the Due Process Clause of the Fourteenth Amendment by impairing, without clear necessity the exercise of appellant's contractual right to terminate ineffective dealers.

Respectfully submitted.

CECIL SIMS
Attorney for Ford Motor Company
Cecil Sims
1000 American Trust Building
Nashville 3, Tennessee

Proof of Service

I, Cecil Sims, one of the attorneys for Ford Motor Company, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 28th day of July, 1960, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto by mailing a copy in a duly addressed envelope with postage prepaid to the respective attorneys of record for all adversary parties, as follows:

(1) To James M. Swiggart, Special Assistant Attorney General, attorney of record for the defendants Chester R. Pace, Executive Secretary of Tennessee Motor Vehicle Commission, Carroll G. Oakes, Chairman of said Tennessee Motor Vehicle Commission, L. F. Buschman, Eugene E. Calloway, James A. Clark, Fred Mitchie, Robert Norris, J. Ivan Potts, Jr., Herbert G. Roberts, John E. Stamps, L. B. Stevens, Members of the said Tennessee Motor Vehicle Commission;

(2) To David M. Pack, Solicitor General of the State of Tennessee, as attorney of record for George F. McCanless, Attorney General of the State of Tennessee;

(3) To Tyree B. Harris, III, attorney of record for E. R. Walker, Sr. and E. R. Walker, Jr., doing business as Cocke County Motor Company;

(4) To K. Harlan Dodson, Jr., attorney of record for intervening defendant Tennessee Automotive Association;

(5) To Val Sanford, attorney of record for Tennessee Auto Auction Association, and Tennessee Independent Automobile Dealers Association.

This 28th day of July, 1960.

CECIL SIMS
Cecil Sims
1000 American Trust Building
Nashville 3, Tennessee,
Attorney for Ford Motor Company.